SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 352.

HENRY THOMAS COGHLAN, APPELLANT,

vs.

THE SOUTH CAROLINA RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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a UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1883, before the judges of the said United States circuit court for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

HENRY THOMAS COGHLAN, Complainant,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants. } In Equity.

Be it remembered that heretofore, to wit, on the fourth day of April, 1881, the said Henry Thomas Coghlan, complainant, impleaded the said South Carolina Railroad Company *et al.*, de-
b fendants, in a bill of complaint, relief, &c., which bill is in the words and tenor following:

1 THE STATE OF SOUTH CAROLINA,
County of Charleston.

Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder, John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Summons for Relief (Complaint Served).

To the defendants, The South Carolina Railroad Company, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, copartners under the firm name and style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran:

2 You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint

on the subscriber at his office, Bank of Charleston building, Broad street, in the city of Charleston, county and State aforesaid, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

T. W. BACOT,
Plaintiff's Attorney.

Dated Charleston, So. Ca., August 28, 1880.

[L. S.] JNO. H. OSTENDORFF, *C. C. P.*

3 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai & Co.; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Complaint.

The plaintiff above named, complaining on behalf of himself and all others the creditors of the South Carolina Railroad Company holding bonds of "The Louisville, Cincinnati and Charleston Railroad Company," hereinafter referred to, who shall in due time come in and seek relief by and contribute to the expenses of this action, alleges:

I. That the South Carolina Railroad Company, one of the defendants above named, is a body politic and corporate by and
4 under certain acts of the General Assembly of the State of South Carolina, as follows:

"1. The General Assembly of the State of South Carolina, by an act (ratified (8 Stat., 354) the 19th day of December, A. D. 1827, and entitled 'An act to authorize the formation of a company for constructing railroads or canals from the city of Charleston to the towns of Columbia, Camden, and Hamburgh'), authorized the formation of a corporate company for the construction of a railroad or a canal, or a railroad and canal, from the city of Charleston, on the most practicable routes, to each of the towns of Columbia, Camden, and Hamburgh, and so forth, the said company to be called 'The South Carolina Canal and Railroad Company;' which said act was amended by subsequent acts, to wit, an act ratified the 30th day of January, A. D. 1828, and entitled (8 Stat., 355) 'An act to amend an act entitled "An act to authorize the formation of a company for

constructing railroads or canals from the city of Charleston to the towns of Columbia, Camden, and Hamburgh;'" an act ratified the 20th (8 Stat., 380) day of December, A. D. 1832, and entitled 'An act concerning the South Carolina Canal and Railroad Company,' and an act ratified the 19th day of (8 Stat., 384,) December, A. D. 1833, and entitled 'An act concerning the South Carolina Canal and Railroad Company.'

5 "2. The General Assembly of the State of South Carolina, by an act (ratified (8 Stat., 406) the 19th day of December, A. D. 1835, and entitled 'An act to cause surveys for a railroad between Cincinnati and Charleston'), appropriated the sum of ten thousand dollars for the purpose of making a full examination and survey of the country between the Ohio river near Cincinnati and the railroad projected by the South Carolina Canal and Railroad Company; and also by an act (ratified the same day, to wit, the said 19th day of December, A. D. (8 Stat., 409) 1835, and entitled 'An act to incorporate the Cincinnati and Charleston Railroad Company') authorized the formation of a company to be called 'The Cincinnati and Charleston Railroad Company,' and to have, when formed, corporate existence in perpetuity.

"3. By an act (ratified the 21st day of December, A. D. 1836, and entitled (8 Stat., 96) 'An act to confer banking privileges on the stockholders of the Louisville, Cincinnati and Charleston Railroad Company on certain terms and conditions') the name of the said 'The Cincinnati and Charleston Railroad Company' was changed to 'The Louisville, Cincinnati and Charleston Railroad Company.'

"4. By an act (ratified the 19th day of December, A. D. 1843, and entitled (11 Stat., 295) 'An act to change the name and style

6 of the Louisville, Cincinnati and Charleston Railroad Company and to provide for uniting therewith the South Carolina Canal and Railroad Company, and for other purposes therein mentioned') the name and style of the said 'The Louisville, Cincinnati and Charleston Railroad Company' was changed to 'The South Carolina Railroad Company.'"

And the said plaintiff alleges that the said South Carolina Canal and Railroad Company has, since the said 19th day of December, 1843, become merged in the said South Carolina Railroad Company, and all the rights, privilegs, and property belonging to the said South Carolina Canal and Railroad Company have vested in and now belong to the said South Carolina Railroad Company.

II. That under and by virtue of an act of the General Assembly of the State of South Carolina (ratified the 20th day of December, 1837, and entitled "An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes," 6th Stat., 571) and an act amending the same (ratified the 19th day of December, 1838, 6 Stat., 604) the said Louisville, Cincinnati and Charleston Railroad Company issued its bonds for the sum of four hun-

7 dred and fifty thousand pounds (£450,000) sterling or thereabouts, redeemable on or before the first day of January, 1866, and bearing interest at the rate of five (5) per centum per an-

num, payable semi-annually, upon all of which bonds the guarantee of the State of South Carolina was duly endorsed, as provided in said last-mentioned acts.

III. That it was provided by the said act of December 20, 1837, that as soon as any of said bonds should be issued by said company and have the guarantee of the State endorsed thereon as aforesaid "the whole estate, property, and funds within the State which the said company may then possess or shall afterwards acquire shall thenceforth stand pledged and mortgaged to the State, without any further act or deed on the part of the company, for the faithful and punctual performance on part of the said company of such contract in priority and preference of any other debt which the said company may then or at any other time owe."

IV. That the said plaintiff is the holder and *bona fide* owner of eighteen (18) of the bonds aforesaid, to wit:

1. Bond No. 18, dated December 31, 1838, conditioned for £500 sterling.
2. Bond No. 19, dated December 31, 1838, conditioned for £500 sterling.
8 3. Bond No. 20, dated December 31, 1838, conditioned for £500 sterling.
4. Bond No. 21, dated December 31, 1838, conditioned for £500 sterling.
5. Bond No. 22, dated December 31, 1838, conditioned for £500 sterling.
6. Bond No. 23, dated December 31, 1838, conditioned for £500 sterling.
7. Bond No. 26, dated December 31, 1838, conditioned for £250 sterling.
8. Bond No. 27, dated December 31, 1838, conditioned for £250 sterling.
9. Bond No. 28, dated December 31, 1838, conditioned for £250 sterling.
10. Bond No. 29, dated December 31, 1838, conditioned for £250 sterling.
11. Bond No. 30, dated December 31, 1838, conditioned for £250 sterling.
12. Bond No. 31, dated December 31, 1838, conditioned for £250 sterling.
13. Bond No. 32, dated December 31, 1838, conditioned for £250 sterling.
14. Bond No. 33, dated December 31, 1838, conditioned for £250 sterling.
15. Bond No. 34, dated December 31, 1838, conditioned for £250 sterling.
16. Bond No. 35, dated December 31, 1838, conditioned for £250 sterling.
17. Bond No. 36, dated December 31, 1838, conditioned for £250 sterling.
9 18. Bond No. 37, dated December 31, 1838, conditioned for £250 sterling.

On each of which said bonds the aforesaid guarantee of the State was duly endorsed according to the provisions of said act of December 20, 1837, and all of which were made payable, both as to principal and interest, in London, England.

V. That the principals of the said bonds held by the said plaintiff as aforesaid became due and payable on the first day of January, 1866, and that no part thereof has been paid; that the interest on said bonds, at the rate of five per cent. per annum, which became due and payable on January 1, 1863, July 1, 1863, January 1, 1864, July 1, 1864, January 1, 1865, July 1, 1865, and January 1, 1866, is still due and unpaid; that there is also due and unpaid interest on said bonds, at the rate of 7 per cent. per annum, from the 1st day of January, 1866, to the 1st day of January, 1868; that there is also due and unpaid a balance of interest on said bonds, at the rate of 7 per cent. per annum, from the 1st day of January, 1868, to the 1st day of July, 1879 (an amount equal to 5 per cent. per annum having been paid from time to time), and that there is also due
10 and unpaid interest on said bonds, at the rate of 7 per cent. per annum, from the first day of July, 1879; that there is therefore now justly due and owing to the said plaintiff on the bonds held by him as aforesaid the sum of six thousand pounds (£6,000) sterling, with interest thereon as aforesaid and interest on said interest from the respective dates at which the same became due.

VI. That the State of South Carolina (the guarantor on said bonds as aforesaid) has taken no steps to protect the said plaintiff and others, holders of similar bonds, although frequently required so to do and notwithstanding the said bonds have been due and payable for nearly fifteen years.

That the said bondholders cannot sue the State of South Carolina on her said guarantee, nor can they compel her by any legal means to foreclose the said mortgage and take the steps necessary to protect them in their rights under the said mortgage, and that they are entitled to enforce the payment of their bonds by foreclosing the mortgage given to the State by the said act of December 20, 1837, "for the faithful and punctual performance on the part of the said company of such contract."

11 VII. That the defendants above named, to wit, H. Pinckney Walker and James M. Calder, as trustees; John Hanckel, Robert Adger, and Benjamin F. Huger, as trustees; David Mordecai and J. Randolph Mordecai, as copartners under the firm name and style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, and George Ballard, have or claim some interest in or lien on the said mortgaged premises accrued since the lien of said mortgage, and that the defendant above named, John Clarence Cochran, is the holder of certain bonds guaranteed by the State of South Carolina, issued under an act of the General Assembly of the State of South Carolina (ratified the 21st day of December, 1865, and entitled "An act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes"); that the said plaintiff has no knowledge sufficient to form a

belief of the amount of such bonds outstanding or by whom (other than the said John Clarence Cochran) they are held, and has therefore made him, the said John Clarence Cochran, a party to this action for himself and others, creditors of the same class. Wherefore the said plaintiff demands judgment:

12 1st. That each of the said defendants and all persons claiming under them or any of them subsequent to the commencement of this action may be foreclosed of all equity of redemption or other interest in said mortgaged premises.

2d. That the same be sold and the proceeds applied, first, to the costs and expenses of this action and then to the payment of the amount due on the bonds held by the said plaintiff as aforesaid and by others, creditors of the same class, who shall in due time come in and seek relief by and contribute to the expenses of this action, with interest up to the time of such payment and exchange on London, England.

3. And for such other and further relief as may be just and proper.

T. W. BACOT,
Plaintiff's Attorney.

13 Service of the within summons & complaint accepted this 28th day of August, A. D. 1880.

For H. Pinckney Walker, trustee—
GEO. R. WALKER &
H. E. YOUNG,
Per G. R. W.

For B. F. Huger, trustee—
B. H. RUTLEDGE.

For People's S. Institution—
LORD & INGLESBY.

For Charles Macbeth—
BUIST & BUIST.

For J. C. Cochran—
RUTLEDGE & YOUNG.

For Rob't Adger & John Hanckel, trustees—
A. G. MAGRATH.

For A. T. Smythe & T. M. Hanckel—
——— ———.

For Mordecai & Co., George Parsons, Leslie Chase, J. C. Maybin—
BUIST & BUIST.
B.

Sept. 3, 1880.

14 In the Court of Common Pleas, Charleston County.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger, David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

STATE OF SOUTH CAROLINA,
County of Charleston.

I hereby certify that I served on The South Carolina Railroad Company, defendant herein named, in the city of Charleston, in said county and State, the summons and complaint in this action, by delivering copies thereof to William J. Magrath, as president; James Conner, as solicitor, and J. H. Fisher, as receiver of said company, and leaving the same with them, respectively, on the days following, viz:

Wm. J. Magrath, on the 1st day of September, 1880.
15 James Conner, on the 2nd day of September, 1880.
J. H. Fisher, on the 29th day of September, 1880.

C. F. BURKE,
Deputy S. C. C.

The clerk will place this cause on docket No. 2.
Jan'y 17, '81.

T. W. BACOT,
Pl'ff's Att'y.

And on summons & complaint (duplicate) the following:
Received 13 Nov., 1880, and entered in Writ Book, page 9, same day.

J. W. LANCASTER, *S. B. Co.*,
Per T.

STATE OF SOUTH CAROLINA,
Barnwell County.

Personally appeared before me J. H. Stoudemire, who, being duly sworn, says that he personally served the within summons and complaint on the within-mentioned defendant, C. E. Bryan, at his residence, in said county, on the 16th day of November, 1880.

16 J. H. STOUDEMIRE.

Sworn to before me this 17th day of November, 1880.

WM. G. TYSON,
Not. Public, So. Ca.

Costs:

Sheriff's entry	$0 25
Mileage	1 50
Service	2 00
Probate	25

[Endorsed:] The State of South Carolina, county of Charleston. In the court of common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, copartners under the name and style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and
17 John Clarence Cochran, defendants. Copy. Summons and complaint. T. W. Bacot, plaintiff's attorney. Filed 28 Aug., 1880. Book A 4. Received Aug. 28, '80. Hugh Ferguson, S. C. C. A true copy.

W. W. SALE,
[SEAL.] *C. C. P. & G. S.*

18 STATE OF SOUTH CAROLINA,
County of Charleston.

Court of Common Pleas.

HENRY THOMAS COGHLAN
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; Mordecai & Company, George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John C. Cochran.

Notice of Appearance.

Please to take notice that the defendants, David Mordecai, J. Randolph Mordecai, George Parsons, Leslie Chase, J. C. Maybin, and Charles Macbeth, appear in this action, and that they have retained us as attorneys for them therein.

Dated Charleston, S. C., September 3d, 1880.

Yours, &c., BUIST & BUIST,
Defendants' Attorneys, No. 30 Broad St.

To T. W. Bacot, plaintiff's attorney.

A true copy.
[SEAL.] W. W. SALE,
C. C. P. & G. S.

19 [Endorsed:] State of South Carolina, county of Charleston. Henry Thomas Coghlan, plaintiff, against The South Caro-

lina Railroad Company *et al.*, defendants. Notice of appearance. Buist & Buist, defendants' attorneys.

I admit due service of the within notice this 3d day of September, 1880.

T. W. BACOT,
Pl'ff's Att'y.

3d Sept., 1880.

20 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
LESLIE CHASE, Impleaded with THE SOUTH CAROLINA Railroad Company; H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benj. F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai and Company; George Parsons, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Answer of Leslie Chase, Defendant.

To the court of common pleas of the first circuit:

The defendant Leslie Chase, answering the complaint herein, says:

I. He admits the allegations contained in the first, second, and third paragraphs thereof.

II. He has no knowledge or information sufficient to form
21 a belief as to the allegations contained in the fourth, fifth, and sixth paragraphs thereof.

III. That this defendant, in the year 1878, recovered a judgment in the United States circuit court for the district of South Carolina against the South Carolina Railroad Company for the sum of three thousand four hundred and eighty-seven $\frac{66}{100}$ dollars, exclusive of interest; and the said judgment was, on the thirteenth day of May, 1878, entered in the office of the clerk of the said court and an execution against property issued thereon, and the same now remains wholly unpaid and unsatisfied.

And this defendant claims that by his said judgment and execution issued thereon he has a lien on all the property of the said South Carolina Railroad Company and is entitled to have the same discharged on any sale which may be made of the same under the order of the court.

BUIST & BUIST,
Defendants' Attorneys.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

22 I accept service of copy of within answer this 19th day of September, 1880.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed:] The State of South Carolina, county of Charleston. In the court of common pleas. Henry Thomas Coghlan, plaintiff, *vs.* The South Carolina Railroad Company *et al.*, defendants. Answer of defendant Leslie Chase. Filed 9th Sept., 1880. Buist & Buist, def'd'ts' att'ys.

23 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
J. C. MAYBIN, Impleaded with THE SOUTH CAROLINA Railroad Company; H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin H. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai and Company; George Parsons, Leslie Chase, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Answer of Defendant J. C. Maybin.

To the court of common pleas of the first circuit:

The defendant J. C. Maybin, answering the complaint herein, says:

I. He admits the allegations contained in the first, second, and third paragraphs thereof.

II. He has no knowledge or information sufficient to form a belief as to the allegations contained in the fourth, fifth, and sixth paragraphs thereof.

24 III. That this defendant, in the year 1878, recovered a judgment in the United States circuit court for the district of South Carolina against the South Carolina Railroad Company for the sum of three thousand four hundred and ninety $\frac{25}{100}$ dollars, exclusive of interest; and the said judgment was, on the thirteenth day of May, 1878, entered in the office of the clerk of the said court and an execution against property issued thereon, and the same now remains wholly unpaid and unsatisfied.

And this defendant claims that by his said judgment and the execution issued thereunder he has a lien on all the property of the said South Carolina Railroad Company and is entitled to have the same discharged on any sale which may be made of the same under the order of the court.

BUIST & BUIST,
Defendant's Attorneys.

A true copy.

W. W. SALE,
C. C. P. & G. S.

25 I accept service of copy of within answer this 9th day of September, 1880.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed:] Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company *et al.*, defendants. Answer of defendant J. C. Maybin. Filed 9 Sept., 1880. Buist & Buist, def'd't's att'y-.

26 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
GEORGE PARSONS, Impleaded with THE SOUTH CAROLINA Railroad Company; H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai and Company; Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Answer of Defendant Geo. Parsons.

To the court of common pleas of the first circuit:

The defendant George Parsons, answering the complaint herein, says:

I. He admits the allegations contained in the first, second, and third paragraphs thereof.

II. He has no knowledge or information sufficient to form
27 a belief as to the allegations contained in the fourth, fifth, and sixth paragraphs thereof.

III. That this defendant, in the year 1878, recovered a judgment in the United States circuit court for the district of South Carolina against the South Carolina Railroad Company for the sum of two thousand eight hundred $\frac{46}{100}$ dollars, exclusive of interest, and the said judgment was, on the thirteenth day of May, 1878, entered in the office of the clerk of the said court and an execution against property issued thereon, and the same now remains wholly unpaid and unsatisfied.

And this defendant claims that by his said judgment and the execution issued thereunder he has a lien on all the property of the said South Carolina Railroad Company and is entitled to have the same discharged on any sale which may be made of the same under the order of the court.

BUIST & BUIST,
Defendant's Attorneys.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

28 I accept service of copy of within answer this 9th day of September, 1880.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed :] The State of South Carolina, county of Charleston. In the court of common pleas. Henry Thomas Coghlan, plaintiff, *vs.* The South Carolina Railroad Company, defendants. Answer of defendant George Parsons. Filed 9th Sept., 1880. Buist & Buist.

29 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
DAVID MORDECAI and J. RANDOLPH MORDECAI, Copartners under the Name and Style of Mordecai and Company, Impleaded with the South Carolina Railroad Company; H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Answer of Defendants David Mordecai and J. Randolph Mordecai.

To the court of common pleas of the first circuit:

The defendants David Mordecai and J. Randolph Mordecai, answering the complaint herein, say:

I. They admit the allegations contained in the first, second, and third paragraphs thereof.

II. They have no knowledge or information sufficient to
30 form a belief as to the allegations contained in the fourth, fifth, and sixth paragraphs thereof.

III. That these defendants, in the year 1878, recovered a judgment in the United States circuit court for the district of South Carolina against the South Carolina Railroad Company for the sum of six thousand and fifty-seven $\frac{25}{100}$ dollars, exclusive of interest, and the said judgment was on the thirteenth day of May, 1878, entered in the office of the clerk of the said court and an execution against property issued thereon, and the same now remains wholly unpaid and unsatisfied.

And these defendants claim that by their said judgment and the execution issued thereunder they have a lien on all the property of the said South Carolina Railroad Company and are entitled to have the same discharged on any sale which may be made of the same under the order of the court.

BUIST & BUIST,
Defendants' Attorneys.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

31 I accept service of a copy of within answer this 9th day of September, 1880.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed:] The State of South Carolina, county of Charleston. Court of common pleas. Henry Thomas Coghlan, plaintiff, *vs.* The South Carolina Railroad Company *et al.*, defendants. Answer of defendants David Mordecai and J. Randolph Mordecai. Filed 9th Oct., 1880. Buist & Buist, def'ts' att'ys.

THE STATE OF SOUTH CAROLINA,
Charleston County.

Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Separate Answer of John H. Fisher, Receiver.

Separate answer of John H. Fisher, receiver of the property of the South Carolina Railroad Company, for and in behalf of said company.

John H. Fisher, receiver of the property of the South Carolina Railroad Company, under an order made September 19th, 1878, in the cause entitled "Calvin Claflin *et al.* against The South
33 Carolina Railroad Company" and others, pending in the circuit court of the United States for the district of South Carolina, pursuant to authority of said order "to defend all actions that may hereafter be brought against the said company," answering the complaint herein, says:

I. That he admits the allegations of the first paragraph of the complaint to be true.

II. That he admits the allegations of the second paragraph of the complaint to be true.

III. That he admits the allegations of the third paragraph of the complaint to be true.

IV. That as to the allegations of the fourth paragraph of the com-

plaint he has no knowledge, information, or belief as to whether the plaintiff is the holder and *bona fide* owner of the bonds described or not, or whether said bonds have duly endorsed thereon the guarantee of the State of South Carolina according to the provisions of the act of December 20th, 1837, and therefore he denies the same.

V. That as to the allegations of the fifth paragraph of the complaint he has no knowledge, information, or belief; therefore he denies the same.

VI. That as to the allegations of fact contained in the sixth paragraph of the complaint, "that the State of South Carolina (the
34 guarantor on said bonds as aforesaid) has taken no steps to protect the said plaintiff and others," &c., he has no knowledge or information, and therefore he desires the same.

That as to matters of law stated in said paragraph he desires the same.

VII. That as to the allegations of the seventh paragraph of said complaint he has no knowledge thereof, and therefore he denies the same.

And it is denied that the plaintiff is entitled to the judgment and relief by him in his said complaint prayed.

D. T. CORBIN,
Solicitor for J. H. Fisher, Receiver.

October 6, 1880.

A true copy.

W. W. SALE,
C. C. P. & G. S.

35 Received copy of this answer this 6th day of October, A. D. 1880.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed:] State of South Carolina, Charleston county. Court of common pleas. Henry Thomas Coghlan, plaintiff, *vs.* The South Carolina R. R. Co. and others. Separate answer of John H. Fisher, receiver. Filed 7 Oct., 1880. D. T. Corbin, solicitor.

36 STATE OF SOUTH CAROLINA,
County of Charleston.

In the Common Pleas.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and JAMES M. CALDER; JOHN HANCKEL, ROBERT ADGER, and BENJAMIN F. HUGER; DAVID MORDECAI and J. RANDOLPH MORDECAI, Copartners under the Firm Name and Style of Mordecai and Company; GEORGE PARSONS, LESLIE CHASE, J. C. MAYBIN, CHARLES MACBETH, The People's Savings Institution, C. E. BRYAN, GEORGE BALLARD, and JOHN CLARENCE COCHRAN.

The defendant Robert Adger, by Augustine T. Smythe, his attorney, answering the plaintiff's complaint, says:

First. That he believes the allegations contained in the first paragraph to be true.

Second. That he has no knowledge or information as to the allegations contained in the second, third, fourth, fifth, sixth, and seventh paragraphs of the complaint sufficient to form a belief as to their truth, and he therefore does not admit the same, but demands that the plaintiff be held to strict proof thereof.

37 Third. Further answering, this defendant says that on the first day of October, 1872, the defendant The South Carolina Railroad Company, in order to secure the payment of its bonds to the amount of three million ($3,000,000) dollars, executed and delivered to this defendant and his codefendants, John Hanckel and Benjamin F. Huger, as trustees, its certain deed of trust, whereby the said company did grant, bargain and sell, assign, transfer, and set over unto this defendant and his codefendants, John Hanckel and Benjamin F. Huger, as trustees, and their successors in said trust and their assigns the South Carolina Railroad *Company* and the other property embraced in said deed of trust, as will more fully appear by reference to the same as it is recorded in the proper offices in the State of South Carolina and Georgia.

And this defendant submits that the said deed of conveyance, by way of mortgage, is a valid and subsisting lien upon the said railroad property, and that the bonds secured thereby are entitled to be paid from the proceeds of sale of the said road according to the legal priority of the lien of said mortgage, reference being had to relative rank of any further or other liens which may be held to exist thereon.

38 Wherefore this defendant prays that the court, in any decree it may make in this cause, will protect the rights of this defendant and his codefendants, John Hanckel and Benjamin F. Huger, as trustees, under the deed of trust above recited, and for his costs in this action.

AUGUSTINE T. SMYTHE,
Def'd't's Att'y.

STATE OF SOUTH CAROLINA, }
County of Charleston. }

Robert Adger, the above-named defendant, being duly sworn, says that the foregoing answer is true of his own knowlege except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

ROBERT ADGER.

Sworn to before me this October 23d, 1880.

TIMOTHY STREET,
Notary Public.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

39 [Endorsed:] State of South Carolina, county of Charleston. In the common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Answer of Robert Adger. Augustine T. Smythe, defendant's att'y. Filed 25 Oct., 1880.

I accept service of the within answer this 25th day of October, 1880.

T. W. BACOT,
Pl'ff's Att'y.

40 STATE OF SOUTH CAROLINA, }
County of Charleston. }

In the Common Pleas.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran.

The defendant Benjamin F. Huger, by B. H. Rutledge, his attorney, answering the plaintiff's complaint, says:

First. That he believes the allegations contained in the first paragraph to be true.

Second. That he has no knowledge or information as to the allegations contained in the second, third, fourth, fifth, sixth, and seventh paragraphs of the complaint sufficient to form a belief as to their truth, and he therefore does not admit the same, but demands that the plaintiff be held to strict proof thereof.

41 Third. Further answering, this defendant says that on the first day of October, 1872, the defendant The South Carolina Railroad Company, in order to secure the payment of its bonds to

the amount of three million ($3,000,000) dollars, executed and delivered to this defendant and his codefendants, John Hanckel and Robert Adger, as trustees, its certain deed of trust, whereby the said company did grant, bargain, sell, assign, transfer, and set over to this defendant and his codefendants, John Hanckel and Robert Adger, as trustees, and their successors in said trust and *thus* assign the South Carolina railroad *company* and the other property embraced in said deed of trust, as will more fully appear by reference to the same as it is recorded in the proper offices in the States of South Carolina and Georgia.

And this defendant submits that the said deed of conveyance, by way of mortgage, is a valid and subsisting lien upon the said railroad property, and that the bonds secured thereby are entitled to be paid from the proceeds of sale of the said road according to the legal priority of the lien of said mortgage, reference being had to relative rank of any further or other liens which may be held to exist thereon.

42 Wherefore this defendant prays that the court, in any decree it may make in this cause, will protect the rights of this defendant and his codefendants, John Hanckel and Robert Adger, as trustees, under the deed of trust above recited, and for his costs in this action.

B. H. RUTLEDGE,
Att'y for B. F. Huger.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Benjamin F. Huger, the above-named defendant, being duly sworn, says that the foregoing answer is true of his own knowledge except as to those matters therein stated on information and belief, and as to those he believes them to be true.

BENJ. F. HUGER.

Sworn to before me this 13th Nov., A. D. 1880.

JENNINGS W. PERRY, *Not. Pub.*

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

43 [Endorsed:] State of South Carolina, county of Charleston. In the common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Answer of B. F. Huger. Filed 16 Nov., 1880. B. H. Rutledge, def't's att'y.

Service of within answer acknowledged this 13th day of Nov., 1880.

T. W. BACOT,
Pl'ff's Att'y.

44 STATE OF SOUTH CAROLINA,
Charleston County.

Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
SOUTH CAROLINA RAILROAD CO. *et al.*, Defendants.

The petition of John H. Fisher, the receiver of the property of the South Carolina Railroad Company, under the order made September 19th, 1878, in the cause entitled "Calvin Claflin *et al. vs.* The South Carolina Railroad Company and others," pending in the circuit court of the United States for the district of South Carolina, and who has filed an answer in the above-entitled cause on behalf of the South Carolina Railroad Company, shows, on information and belief, that Henry Thomas Coghlan, plaintiff named in said cause, is a citizen and subject of the Kingdom of Great Britain and a resident of London, England, and that the defendant, The South Carolina Railroad Company, is a corporation in and of the State of South Carolina and a citizen thereof.

45 And your petitioner further shows that all the other defendants beside the South Carolina Railroad Company in the above-entitled cause are nominal parties only and are in no way necessary for the determination of the issues between the plaintiff and this defendant; that the matter in dispute in said cause exceeds, exclusive of costs, the sum or value of five hundred dollars, and your petitioner shows that under and by virtue of the statutes of the United States in such case made and provided he is entitled to remove said cause, upon giving proper bond with good and sufficient security, from this court to the circuit court of the United States for the district of South Carolina, next to be holden at Columbia, in the State of South Carolina, on the fourth Monday in November, A. D. 1880, and your petitioner herewith files said bond and prays that the said cause may be removed as aforesaid.

JOHN H. FISHER, *Receiver.*

46 STATE OF SOUTH CAROLINA,
Charleston County.

Personally appears John H. Fisher, who, being duly sworn, deposes and says that the facts stated in the above petition subscribed by him are true of his own knowledge except those stated on information and belief, and those he believes to be true.

Before me this 22d day of November, A. D. 1880.

JAMES BRENNAN,
Notary Public, S. C.

[SEAL.]

A true copy.

W. W. SALE,
C. C. P. & G. S.

47 [Endorsed:] State of South Carolina, Charleston county. Court of common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Petition for removal of cause to the United States circuit court. Filed 22 Nov., 1880. D. T. Corbin, solicitor.

48 STATE OF SOUTH CAROLINA, }
Charleston County. }

Court of Common Pleas.

Know all men by these presents that we, John H. Fisher, receiver of the property of the South Carolina Railroad Company, and David T. Corbin, jointly & severally, are held and firmly bound to Henry Thomas Coghlan in the sum of five hundred dollars; for which sum, to be well and truly paid, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents.

Done this 22d day of November, A. D. 1880.

The condition of this obligation is such that if the said John H. Fisher, receiver, who has this day filed his petition in said court in a certain cause entitled Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, copartners under the name and style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The Peoples' Savings Institution, C. E. Bryan, George Ballard, and John
49 Clarence Cochran, defendants, for the removal of said cause to the circuit court of the United States for the district of South Carolina, shall enter in said circuit court of the United States, on the first day of its session, copies of the process in said cause against him, and of all pleadings, depositions, testimony, and other proceedings in said cause, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JNO. H. FISHER, *Receiver.* [SEAL.]
D. T. CORBIN. [SEAL.]

A true copy.

W. W. SALE,
C. C. P. & G. S.

50 [Endorsed:] State of South Carolina, Charleston county. Common pleas. Henry Thomas Coghlan, pl'ff, *vs.* The South Carolina Railroad Company *et al.* Bond for removal of cause. Filed 22 Nov., 1880. D. T. Corbin, att'y for pet.

51 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*

The joint and several answer of Henry Pinckney Walker and James M. Calder, two of the defendants in the above-stated cause.

These defendants, for answer to the plaintiff's complaint, allege and say:

I. They believe to be true the allegations contained in the first, second, and third paragraphs of the complaint, but for greater certainty crave leave to refer to the acts therein set forth in part and to the books of the defendant company whenever necessary.

II. Of the allegations contained in the fourth, fifth, and sixth paragraphs of the said complaint, these defendants have not sufficient knowledge or information to form a belief, and pray strict proof thereof. They further say that on the first day of July, A. D. 1868, the said defendant, The South Carolina Railroad Company, executed and delivered to them and the late Henry Gourdin, their co-
52 trustee, a mortgage of all its present and future to be acquired property in trust to secure a certain number of bonds to be issued by the said company for the purpose of calling in, paying, and cancelling the bonds of the said defendant company of the class and kind now claimed to be held by the plaintiff; that all, or very nearly all, of such bonds were so called in, paid, and cancelled, and these defendants cannot say of their own knowledge whether or not there are now any of such bonds outstanding and unpaid, and pray that the same may be strictly enquired into.

III. That these defendants, as trustees, hold the said mortgage upon all and singular the property, present and future to be acquired, of the said defendant company to secure the payment of certain bonds to the gross amount of (£620,000) six hundred and twenty thousand pounds sterling issued by the said defendant company, and the said mortgage is a lien ahead of all other liens on the said railroad company except the bonds of the said plaintiff, if he holds such as he claims to hold, which these defendants deny as aforesaid.

IV. These defendants further say that Calvin Claflin and others, holders of the bonds of the said defendant company, secured
53 by a second mortgage of the property thereof, did on the — day of June, A. D. 1878, file their bill in the circuit court of the United States for the district of South Carolina against the said South Carolina Railroad Company, these defendants, and others, to foreclose the said second mortgage executed by the said South Carolina Railroad Company to Robert Adger, John Hanckel, and Benjamin F. Huger, trustees, and that by certain decretal orders in the said cause a receiver of all the property of the said railroad company

was appointed (viz.), John H. Fisher, and that the said property of the said railroad company is still held under the order of the said court by the said receiver, though true it is that no bondholder of the class of which the plaintiff claims to be one is made a party to the said suit.

Wherefore these defendants pray that the court, in any decree which it may make in the premises, will provide that the debt due to the bondholders secured by the mortgage held by these defendants in trust be fully satisfied and paid according to the rank and priority of the said mortgage, and that the rights of these defendants as trustees aforesaid may be protected, and that they may have all the relief to which they are properly and equitably enti-
54 tled, and be hence dismissed with their costs.

H. E. YOUNG,
GEO. RIVERS WALKER,
BRAWLEY & BARNWELL,
Att'ys for the Trustees.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Personally appeared before me H. Pinckney Walker, who, being duly sworn, says that the within answer is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

H. P. WALKER.

Sworn to before me this twenty-seventh day of January, A. D. 1881.

[SEAL.] THOS. A. FULLER,
Notary Public.

A true copy.

W. W. SALE,
C. C. P. & G. S.

55 I acknowledge service this 27th Jan'y, 1881, and consent that it be filed forthwith.

T. W. BACOT,
Pl'ff's Att'y.

[Endorsed:] State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Answer of H. P. Walker and James M. Calder. H. E. Young, Geo. Rivers Walker, Brawley & Barnwell, att'ys. Filed 28 Jan'y, 1881.

56 STATE OF SOUTH CAROLINA, }
Charleston County. }

In the Court of Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Firm Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran.

The defendant John Hanckel, by Thomas M. Hanckel, his attorney, answering the complaint herein, says:

First. That he is informed and believes that the allegations contained in the first paragraph of the complaint are true.

Second. That he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second, third, fourth, fifth, sixth, and seventh paragraphs of the complaint, and he therefore does not admit them, but demands that the plaintiff be held to strict proof thereof.

57 Third. And this defendant, further answering, says that on the first day of October, eighteen hundred and seventy-two, his codefendants, The South Carolina Railroad Company, in order to secure the payment of its bonds to the amount of three million dollars ($3,000,000), executed and delivered to this defendant and his codefendants Robert Adger and Benjamin F. Huger, as trustees, its certain deed of trust, whereby the said company did grant, bargain, sell, assign, transfer, and set over to this defendant and his codefendants Robert Adger and Benjamin F. Huger, as trustees, their successors and assigns, all the property known as the South Carolina railroad and other property belonging to said company and incident and appertaining to said railroad named, specified, described, and embraced in said deed of trust, as by reference to the same, which has been duly recorded in the proper offices in the States of South Carolina and Georgia, will more fully appear.

And this defendant submits that the said deed of conveyance by way of mortgage is a valid and subsisting lien upon the said The South Carolina railroad property and all the other property embraced in said deed by way of mortgage, and that the bonds

58 secured thereby are entitled to be paid out of the proceeds of sale of said property of the South Carolina Railroad Company according to the legal priority of the lien of said mortgage, reference being had to the relative rank of any further and other liens thereon which may be established under proceedings in this action.

Wherefore this defendant prays that the court in any decree it may make in this cause will protect the rights of this defendant and his codefendants Robert Adger and Benjamin F. Huger, as trustees,

under the deed of trust above recited and the rights and interests of the holders of the bonds thereby secured, and provide for the payment of his costs and expenses in this action.

THOS. M. HANCKEL,
Def'd't's Att'y.

A true copy.

W. W. SALE,
C. C. P. & G. S.

59 [Endorsed:] The State of South Carolina, Charleston county. In the court of common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company, John Hanckel, Robert Adger, Benjamin F. Huger, and others. Answer of John Hanckel. Filed 4 Feb'y, 1881. T. M. Hanckel, def'd't's att'y.

I acknowledge service of this answer this 3d Feb'y, 1881, and consent that it be filed forthwith.

T. W. BACOT,
Pl'ff's Att'y.

60 STATE OF SOUTH CAROLINA, *Charleston County.*

In the Court of Common Pleas.

HENRY THOMAS COGHLAN *against* THE SOUTH CAROLINA RAILROAD COMPANY *et al.* — Answer of People's Savings Institution.

The defendant The People's Savings Institution, answering the complaint herein, says:

I. It admits to be true the matters stated in the first, second, and third paragraphs of the said complaint.

II. That as to the matters stated in the fourth and fifth paragraphs of the said complaint, this defendant has not knowledge or information sufficient to form a belief as to the truth thereof.

III. It believes to be true the matters stated in the sixth paragraph of the complaint.

IV. That as to the matters stated in the seventh paragraph of the complaint this defendant has not knowledge or information sufficient to form a belief as to the truth thereof, except that this defendant avers that it is the holder of a judgment against the South Carolina Railroad Company entered up in this court on the 14th day of June, 1878, and on which there was due on the first
61 day of December, 1880, the sum of seventy-six hundred and four $\frac{50}{100}$ dollars for principal, interest, and costs.

LORD & INGLESBY,
Att'ys for Def'd't People's Savings Institution.

A true copy.

W. W. SALE,
C. C. P. & G. S.

[Endorsed :] State of South Carolina, Charleston county. In common pleas. Henry Thomas Coghlan ag't The South Carolina R. R. Co. *et al.* Answer of People's Savings Institution. Filed 25 Feb'y, 1881. Lord & Inglesby, def'd't's att'ys.

I accept service of within answer this 25th day of February, 1881.
T. W. BACOT,
Pl'ff's Att'y.

62 THE STATE OF SOUTH CAROLINA, *County of Charleston.*

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff, *against* THE SOUTH CAROLINA RAILROAD COMPANY and Others, Defendants. | Objections on Behalf of Plaintiff to the Removal of the Cause.

The plaintiff objects to the removal of this cause from this court to the United States circuit court for the eastern district of South Carolina on the following grounds, among others, to wit:

I. John H. Fisher, receiver, is not the proper party to make the petition.

II. The petition, taken in connection with the pleadings and process, fails to show such a state of facts as would give the United States circuit court jurisdiction, in that—

1. It fails to show the citizenship at the time of the commencement of the action.

2. It fails to show that there is a controversy, and also that there is a controversy which is wholly between citizens of different States and which can be fully determined as between them.

III. The bond fails to comply with the requirements of the act of Congress, in that—

63 1. It is not "with good and sufficient surety," the only surety being an attorney of this court, and, moreover, the actual attorney of the petition.

2. Its condition is not such as the act of Congress expressly requires.

IV. A copy of the whole record, including the petition for removal and the bond, should have been entered in the United States circuit court, and not a part thereof only.

V. But admitting, for the sake of argument, that both the petition and bond and the entry of the record are perfectly regular, then—

1. Under the first subdivision of sec. 2 of the act of Congress of March 3, 1875, all the parties on the petitioner's side of the controversy have not joined in the petition.

Or if all the other parties to the suit are on the side of the controversy opposite to petitioner's, then the controversy is not altogether between persons of different citizenship, some of them being residents of the same State as petitioner.

2. Under the second subdivision of the said sec. 2, and the con-

troversy is wholly between the plaintiff and the petitioner, then it is not a controversy "between citizens of different States."

VI. And the plaintiff insists, even if the cause is remov-
64 able, that this (State) court can proceed until it is judicially informed that its power over the cause has been suspended.

T. W. BACOT,
Atty for Plaintiff.

A true copy.

W. W. SALE,
C. C. P. & G. S.

[Endorsed:] State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company and others, defendants. Objections on behalf of the plaintiff to the removal of the cause. Filed 28 Feb'y, 1881.

65 THE STATE OF SOUTH CAROLINA,
Charleston County.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY and Others. } Notice of Motion to Refer Cause.

Please take notice that the undersigned will move the court on Monday next, the 28th inst., at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order of reference herein, a copy of the proposed order being hereunto annexed.

23 February, 1881.

T. W. BACOT,
Pl'ff's Att'y.

To Messrs. D. T. Corbin, H. E. Young, Brawley & Barnwell, George R. Walker, Thomas M. Hanckel, A. T. Smythe, B. H. Rutledge, Buist & Buist, Lord & Inglesby, Rutledge & Young.

66 THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY and Others, Defendants. } Order of Reference.

It is ordered that it be referred to W. D. Clancy, Esquire, one of the masters in and for the said county of Charleston, to hear and determine all the issues of law and fact involved in this cause, with leave to report any special matter.

It is further ordered that the said master do take an account of the bonds issued by the Louisville, Cincinnati and Charleston Railroad Company under and by virtue of the act of the General Assembly of the State of South Carolina entitled "An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes," ratified the 20th day of December, 1837, and an act amending the same, ratified the 19th day of December, 1838, which are now outstanding and unpaid, and that the said master
67 do ascertain and report the number and amount of such bonds, together with the amount of principal and interest due thereon.

It is further ordered that the said master do take an account of all debts, secured and unsecured, other than the bonds above mentioned of the said South Carolina Railroad Company, and that he do ascertain and report the amounts of all such debts, principal & interest, together with their rank and priority.

It is further ordered that the said master shall for said purpose, by advertisement in one or more daily papers publish- in the city of Charleston and New York and in the city of London, England, require the holders of the said Louisville, Cincinnati and Charleston railroad bonds and all other creditors of the said South Carolina Railroad Company to present to and prove their respective bonds and claims before him at his office, in the city of Charleston, and at such times and places and before such persons as he may appoint in the city of New York and London, and that the said master do file a report of all the matters herein referred with all convenient speed with leave to the request of any of the parties to this cause to
68 file from time to time separate reports of any of the matters herein referred.

And it is further ordered that any of the parties to this cause or any creditor may apply to this court from time to time for further directions in the premises.

A true copy. W. W. SALE,
[SEAL.] *C. C. P. & G. S.*

[Endorsed :] State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company and others, defendants. Notice of motion to refer cause. Filed 28th Feb'y, 1881.

69 Service of the within notice acknowledged this 23d Feb'y, 1881.

D. T. CORBIN.
BRAWLEY & BARNWELL.
LORD & INGLESBY.
BUIST & BUIST.
A. T. SMYTHE.
B. H. RUTLEDGE.
RUTLEDGE & YOUNG.
H. E. YOUNG.
THOMAS N. HANCKEL.
GEO. R. WALKER.

THE STATE OF SOUTH CAROLINA,
Charleston County.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

The answer of John Clarence Cochran, one of the defendants in the above cause, to the complaint of the plaintiff.

70 This defendant, for answer to the said complaint, alleges and says:

1. He believes to be true the allegations contained in the first, second, and third paragraphs of said complaint, but, for greater certainty, he craves leave to refer to the act therein set forth in part and to the books of the defendant company whenever necessary.

2. Of the allegations contained in the fourth, fifth, and sixth paragraphs he has not knowledge or information sufficient to form a belief, and prays strict proof thereof.

3. Of the allegations contained in the seventh paragraph, other than those which relate specifically to this defendant, he has only a general knowledge, and is not prepared either to admit or deny them, and therefore prays strict proof thereof.

4. That under and by virtue of certain acts of the State of South Carolina, the one entitled "An act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company, and for other purposes," passed on the 21st day of December, A. D. 1865 (13 Statutes at Large, pg. 362, 363), hereinafter known as the act of 1865, and the other entitled "An act to lend the credit of the State to secure certain bonds to be issued by the

71 South Carolina Railroad Company," passed on the 19th day of December, A. D. 1866 (13 Statutes at Large, pg. 377), hereinafter known as the act of 1866, certain bonds of the said defendants railroad company were duly issued, endorsed by the State of South Carolina and secured by a lien on the property of said defendant railroad company, as provided for by the third section of the said act of 1865, viz:

III. "And whereas the bonds to be issued in pursuance of this act are in substitution of the bonds guaranteed by the State under the act ratified the twentieth day of December, eighteen hundred and thirty-seven, and an extension of the principal and interest due thereon:

"Be it therefore further enacted, That as soon as the treasurer of the State shall have made any such endorsement on any such bonds all the estate, property, and funds mortgaged to the State by the act ratified on the twentieth day of December, eighteen hundred and thirty-seven, shall continue mortgaged and pledged to the State to secure the State against any liability on said loan and the endorsements to be made in pursuance of this act for the payment thereof

in like manner — to the same extent as the said estate, prop-
72 erty, and funds are now mortgaged and with all the rights of priority and lien given by the said act to the State."

That by this section the said bonds are invested with and are secured by the same lien as the bonds claimed to be held by the plaintiff, and this defendant denies that the plaintiff is entitled to any priority of payment or superiority of lien to this defendant.

5. That of such bonds issued according to the said acts of 1865 and 1866 this defendant holds the following, viz: Nos. 89, 90, 91, and 94, each for (£500) five hundred pounds sterling, in all (£2,000) two thousand pounds sterling.

Wherefore this defendant prays that in any decree which this court may make the payment of his bonds shall be provided for, and that he be hence dismissed with his costs.

RUTLEDGE & YOUNG,
Defendant's Att'ys.

JOHN C. COCHRAN.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

73 [Endorsed:] The State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company, defendants. Answer of John Clarence Cochran. Filed 22 March, 1881.

I accept service of the within answer this 28 Feb'y, 1881.

T. W. BACOT,
Pl'ff's Att'y.

74 In the Common Pleas, Charleston County, State of South Carolina.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

STATE OF SOUTH CAROLINA,
County of Charleston.

George Rivers Walker, being first duly sworn, says that Henry Pinckney Walker, one of the defendants in the above-entitled cause, is a British subject, an alien, and is not a citizen of the United States nor of any of the United States.

GEO. RIVERS WALKER.

Sworn to and subscribed before me this 22 day of March, A. D. 1881.

[SEAL.]

W. W. SALE,
C. C. P. & G. S.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

75 [Endorsed:] State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company *et al.*, defendants. Affidavit of Geo. Rivers Walker. Filed 22 March, 1881.

THE STATE OF SOUTH CAROLINA,
County of Charleston.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY and Others, Defendants. } Order of Reference.

This is a motion by the plaintiff's attorney to refer the cause
76 to W. D. Clancy, Esquire, one of the masters in and for the county aforesaid, upon notice duly served on all the counsel for the defendants. The motion is resisted by the counsel of John H. Fisher, receiver of the property of the South Carolina Railroad Company, on the ground that he has possession and control of all the property of the defendant corporation, the said South Carolina Railroad Company, under and by virtue of an order of the circuit court of the United States for the district of South Carolina, made on the 19th day of September, 1878, in a certain cause therein pending, wherein Calvin Claflin and others are complainants and The South Carolina Railroad Company and others are defendants, and also on the ground that the said receiver has filed in this court a petition and bond for the removal of this cause to the said circuit court of the United — under the act of Congress of March 3, 1875. Neither the plaintiff in this action nor any other holder of bonds of the same class as those held by the plaintiff are named as defendants in the said suit of Calvin Claflin and others against The South Carolina Railroad Company and others, nor have they or any of them been served with process therein, nor have they or any of them intervened therein, and, their lien being prior to that of
77 the complainants therein, they are not necessary parties, and their rights are therefore unaffected and unimpaired by the pendency of that suit.

This court will, of course, be careful to pay due respect to the previously acquired jurisdiction of the United States circuit court over the property of the said company, and while it will not proceed to a decree of foreclosure and sale or otherwise against the *res* as long as the other court has any rightful control over it, yet this court will proceed herein as far as it may deem necessary and proper. Again, this court recognizes the right to removal of a cause in proper cases, provided the requirements of the act of Congress are strictly complied with; but, at the same time, this court must judge whether those provisions have been strictly complied with, both as to the truth of the averments of the petition for removal and sufficiency of the bond therewith filed, before it can relinquish its jurisdiction, and the jurisdiction of this court does not cease until it is

judicially informed that its power over the cause has been suspended. In this case the petition, taken in connection with the pleadings, fails to show such citizenship at the time of the commencement of the action as would give the United States circuit court jurisdiction, the averment of citizenship in the
78 petition being in the present tense, and therefore only as of the time of the application for removal; it also fails to show that there is a "controversy" and a "controversy" which is wholly between the plaintiff and the South Carolina Railroad Company. The bond is not "with good and sufficient surety," in that the only surety is an attorney of this court, which is contrary to rule IX of the rules of practice of the circuit courts of this State, and the actual attorney of the petitioner, and besides he does not seem by the certificates presented to be a householder and worth enough over and above all debts and exclusive of property exempt by law from execution. The condition of the bond, moreover, is defective, and is not at all such as required by the act of Congress. This court cannot therefore accept said petition and bond, and besides, as it has not been judicially informed that its power over the cause has been suspended, it will proceed further in the suit. It must also be observed that a copy of the whole record in this suit has not been entered in the said circuit court of the United States, as required by the act of Congress.

It is therefore adjudged, decreed, and ordered that the
79 prayer of the petition be refused, and that the objections of the petitioner to the order of reference proposed by the plaintiff's attorney herein be overruled.

It is also further ordered that it be referred to W. D. Clancy, Esquire, one of the masters in and for the county of Charleston aforesaid, to hear and determine all the issues of law and fact involved in this cause, with leave to report any special matter.

It is further ordered that the said master do take an account of the bonds issued by the Louisville, Cincinnati and Charleston Railroad Company under and by virtue of the act of the General Assembly of the State of South Carolina entitled "An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company and for other purposes," ratified the 20th day of December, 1837, and an act amending the same, ratified the 19th day of December, 1838, which are now outstanding and unpaid, and that the said master do ascertain and report the number and amount of such bonds, together with the amount of principal and interest thereon.

It is further ordered that the said master do take an account
80 of all debts, secured and unsecured, other than the bonds above mentioned, of the said South Carolina Railroad Company, and that he do ascertain and report the amounts of all such debts (principal and interest), together with their rank and priority.

It is further ordered that the said master shall for said purposes, by advertisement in one or more daily papers published in the cities of Charleston and New York and in the city of London, England, require the holders of the said Louisville, Cincinnati and

Charleston railroad bonds and all other creditors of the said South Carolina Railroad Company to present to and prove their respective bonds and claims before him at his office, in the city of Charleston, at such times as he may appoint, or at such times and places and before such persons as he may appoint, in the said cities of New York and London, and that the said master do file a report of all the matters herein referred with all convenient speed, with leave at the request of any of the parties to this cause to file from time to time separate reports of any of the matters herein referred.

And it is further ordered that any of the parties to this cause or any creditor may apply to this court from time to time for further direction in the premises.

81 T. J. MACKEY,
Pres. Judge.

March 22d, 1881.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

[Endorsed:] State of South Carolina, county of Charleston. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company and others, defendants. Order of reference. Filed 22 March, 1881.

82 STATE OF SOUTH CAROLINA,
Charleston County.

In the Common Pleas.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY and Others.

On hearing the motions for a reference herein and the objections thereto made on behalf of the defendant, The South Carolina Railroad Company, and it having been adjudged that the petitions and bond for removal filed on behalf of the defendant, The South Carolina Railroad Company, are insufficient, and counsel for the said defendant, The South Carolina Railroad Company, having moved for leave to amend said petition by adding averments as to the citizenship of the parties at the commencement of this action, and thereupon furnishing a new bond, with additional security, sufficient in law—

It is therefore ordered that the said motion to amend and file a new bond be refused.

T. J. MACKEY,
Pres. Judge.

March 22d, 1881.

83 A true copy.

W. W. SALE,
C. C. P. & G. S.

[Endorsed:] State of South Carolina, Charleston county. Common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Co. *et al.* Order dismissing motion to amend. Filed 22 March, 1881.

84 THE STATE OF SOUTH CAROLINA,
Charleston County.

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY Walker and James M. Calder, John Hanckel, Robert Adger, Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai & Co.; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, People's Saving Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

To the honorable the presiding judge of the court of common pleas for Charleston county:

The petition of John H. Fisher, receiver of the South Carolina, Railroad Company, respectfully shows—

I. That your petitioner is the duly appointed receiver of the entire property and estate of the defendant, The South Carolina Railroad Company, under and by virtue of an order made on the 19th Sept., 1878, by the circuit court of the United States for the district of South Carolina in a certain case therein pending,
85 wherein Calvin Claflin and others are complainants and The South Carolina Railroad Company and others are defendants, a certified copy of which said order is hereto annexed as a part of this petition.

II. That under and by virtue of said order and of the subsequent proceedings in said cause your petitioner has taken possession of and now holds the property mentioned in said order, and that the said cause is still pending in the said United States circuit court for the district of South Carolina.

III. That Henry Thomas Coghlan, above-named plaintiff herein, is and was at the time of the commencement of the action herein a citizen and subject of the Kingdom of Great Britain and a resident of London, England, and that the defendant, The South Carolina Railroad Company, is and was at the time of the commencement of the action herein a corporation in and of the State of South Carolina and a citizen thereof, and that the matter in dispute in the aforesaid cause in this honorable court exceeds, exclusive of costs, the sum or value of five hundred dollars.

IV. That all the other defendants in the said cause in this honorable court besides the South Carolina Railroad Company are nominal parties only, and are in no way necessary to the deter-
86 mination of the issues between the plaintiff and this defend-

ant, and that the controversy in said cause is between citizens of a State and a citizen and subject of a foreign State.

V. That the said United States circuit court for the district of South Carolina is in possession of the entire property, real and personal, of the defendant, The South Carolina Railroad Company, including the premises mentioned in the complaint herein, and your petitioner offers herewith a good and sufficient surety for his entering in said circuit court of the United States on the first day of its next sessions a copy of the record in this cause and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto, and he prays this honorable court to proceed no further herein, except to make the order for removal and to accept said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the district of South Carolina; and he will ever pray.

D. T. CORBIN,
Sol. for J. H. Fisher, Rec.

87 STATE OF SOUTH CAROLINA, } ss:
Charleston County, }

John H. Fisher, petitioner above named, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes — to be true.

JNO. H. FISHER.

Sworn to before me this 18th day of March, 1881.

[SEAL.] W. W. SALE,
C. C. P. & G. S.

EXHIBIT A.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

CALVIN CLAFLIN, CYRUS GATEWOOD, JOHN PARSONS, MARY C. WILLIAMS, Frank C. Eddy, Benjamin S. Hatch, Thomas R. Burnham, John F. Robinson, and William T. Lockwood, Complainants,

against

88 THE SOUTH CAROLINA RAILROAD COMPANY, JOHN HANCKEL, Robert Adger, Benjamin F. Huger, Henry Gourdin, H. Pinckney Walker, James S. Gibbs, Francis J. Pelzer, George W. Williams, Andrew Simonds, Louis D. De Saussure, Charles T. Lowndes, A. O. Andrews, Solomon S. Solomons, Henry A. Middleton, C. H. Manson, David Mordecai, J. Randolph Mordecai, The People's National Bank of Charleston, The First National Bank of Charleston, The Bank of Charleston National Banking Association, The Carolina Savings Bank of Charleston, The South Carolina Loan and Trust Company, The People's Bank of South Carolina, The Union Bank of South Carolina, The Home Insurance Company of Charleston, The Carolina National Bank of Columbia, John Gadsden, the Younger; J. N. Lucas, Edward L. Horlbeck, Franklin R. Hagood, Clarence B. Cochran, Henry Winthrop, John C. Cochran, Executor; Charles F. De Saussure, Joseph Winthrop, Executor; John B. Lance, Trustee; Peter C. Gaillard, Treasurer; E. N. Solomons, Edward Magrath, Arthur B. Rose, Trustee; L. C. Mordecai, the Younger; The People's Savings Institution, The Union Kilwinning Lodge, Number Four, of Ancient Freemasons, M. H. Valentine, Thomas W. Porcher, James G. Drayton, The National Bank of Chester, and The National Bank of Greenville, Defendants.

89 *Bill for Foreclosure, Receiver, Injunction, etc.*

This cause, in respect to the application for the appointment of a receiver and for a special injunction, came on to be heard at chambers, in pursuance of notice duly served, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First. That John H. Fisher, Esq., of New York, be, and he is hereby, appointed a receiver of the entire property and effects embraced in the trust deed set forth in complainants bill—that is to say, the railroad constructed and owned by the said South Carolina Railroad Company in the States of South Carolina and Georgia, with all the railway tracks, sidings, bridges, and viaducts thereto belonging and all lands and rights of way thereto incident, not exceeding the space of thirty (30) feet on each side from the centre of the main track, and all lands belonging to the said company and used by it for wood and water stations, depots, warehouses, offices, machine shops, car and engine houses, and all locomotives, tenders

cars, stationary engines, tools, materials, machinery, and other personal property of the said South Carolina Railroad Company necessary to and employed in the working of the said road, and
90 all the rights, privileges, and franchises to the said company belonging, and also all the earnings and income of or from said property, whether the same may have accrued before or since the fifth day of July, 1878; all and singular the books, papers, and records of the said company and all other personal property of every description of the said company.

Second. That the said receiver, before entering upon the performance of his duties as such under this order, do execute a bond, with sureties to be approved as to form and sufficiency by a judge of the United States court of the district where the sureties reside, and filed with the clerk of this court, in the sum of one hundred thousand dollars, for the faithful discharge of his duties in the premises.

Third. That upon the filing of such bond the receiver proceed to take possession of all and singular the premises whereof he is hereby appointed receiver and continue to run and operate the said railroad of the defendant company as the same is now operated for the common carriage of freight and passengers, keeping the premises and property, both real and personal, in good condition and repair, to the end that the said road may be operated efficiently and with safety to the public, and he as such receiver has authority to employ, pay, and discharge from to time, in his discretion, all needful
91 laborers, servants, agents, attorneys, and counsel; to purchase and pay for all needful material and supplies: to settle and adjust with other roads and steamship lines all traffic balances in the usual course of business; to make from time to time, in his best discretion, all needful and proper traffic arrangements with other roads and steamship lines for the interchange of business; to pay all taxes on the property whereof he is appointed receiver that may be due and payable or become due and payable during this receivership; to prosecute and defend without the further orders of this court all existing actions by or against said company, and to defend all actions that may hereafter be brought against the said company or against himself as such receiver by the permission of this court, and to pay the expenses of such prosecution and defence, and also the expenses and disbursements of complainants in and about the appointment of the said receiver; to use the name of the said company in the prosecution of all such actions as he may find it proper or necessary in his discretion to bring, maintain, or defend, with full power to compromise, adjust, or settle in his best discretion all such actions, suits, or controversies now existing or that may hereafter arise; to do whatever may be needful and proper to
92 maintain and preserve the corporate organization and franchises of the company until the further order of this court, and to pay and expend such sum, and no more, for these purposes as may hereafter, on application and hearing, be ordered by this court at a regular or special term thereof.

Fourth. It is further ordered that as soon as may be, after the receiver has entered upon the performance of his duties, he make a

true and faithful inventory of all and singular the real and personal property, of every kind and description, whereof he is appointed receiver and which may come into his possession, and file the same with the clerk of this court, and due notice of such filing to be given to complainants' solicitors; that the said receiver do keep full, true, and accurate accounts of all and singular his acts and doings in the premises; that he render and file with the clerk of this court such account within ten days after the expiration of every month of his receivership and serve copies thereof upon the complainants' solicitors, and that he have liberty to pass his accounts from time to time before William L. Trenholm, Esq., who is hereby appointed a master for that purpose, on ten days' notice to the complainants' solicitors after the service on them of such copy thereof; that any questions which may arise on such
93 accounting be reported to this court for examination and decision, and that such accounting, when from time to time had and completed, shall be final and conclusive upon all parties, unless, on due cause shown, the same shall, during the pendency of this action, be opened on special application.

Fifth. It is further ordered that all moneys coming into the hands of the said receiver be deposited in one or more safe banks of deposit within the State of South Carolina, to be approved by this court or a judge thereof. It is further ordered that the said receiver, exercising due prudence and caution in the selection thereof, shall not be responsible for the wrongful acts of his servants and agents. It is further ordered that the said receiver shall not in any case incur any personal or individual liability in the operation of the said line of railroad or otherwise in the premises by reason of any act or thing done by him as receiver or by his servants, agents, or attorneys, the said receiver acting in good faith and in the exercise of his best discretion; but the mortgaged premises will, nevertheless, be chargeable with any judgment which may be established against the receiver in any action brought against him by any person under leave of this court first had or obtained.

94 Sixth. It is further ordered that all applications for interlocutory orders or relief in this action on behalf of any party thereto or the receiver herein shall be made on notice by the moving party to the party or parties of at least ten days, exclusive of the day of service, and on due proof of personal services of notices, unless the notice hereby required is waived in writing: Provided, however, that the said receiver shall not part with the possession of any of the property of the said company, nor shall he pay out any of the moneys which may come into his hands as such receiver than as herein provided for except upon an order of this court made in term time.

Seventh. It is further ordered that the said South Carolina Railroad Company and its officers, agents, and attorneys, and all persons whatsoever, be, and they are hereby, strictly commanded and enjoined peacefully to deliver up and surrender to the said receiver all and singular the premises whereof he is hereby appointed receiver, under the penalty attaching by law to disobedience; and in

the meantime, and until the actual taking possession of the said property by the said receiver, it is ordered that the said South Carolina Railroad Company, its president, officers, agents, and
95 attorneys, be, and they are hereby, enjoined and restrained from disposing of or parting with any of the property, real or personal, except in the payment of the necessary daily operating expenses of said road; and that the said company forthwith deposit all moneys and available balances now in its possession or under its control and which may come into its possession or under its control, and which may come into its possession from day to day, except what is needed for the said necessary daily operating expenses, in the First National Bank of Charleston, S. C., subject to the order of this court in this cause.

Eighth. And it is further ordered that the said receiver be authorized to audit and pay off, with any funds which may come into his hands as receiver, the claims of such employees and laborers as the said company has employed in the operating and running of the said railroad, for wages which may be due and unpaid to them within sixty days prior to this order, provided such employees and laborers are in the employment of the said company at the time when the said receiver shall take possession of the property thereof, and such claim has not been assigned or parted with by such claimants.

Ninth. It is further ordered that a writ of injunction do issue out of this court directed to the said defendants, Henry Gourdin,
96 James S. Gibbes, Francis J. Pelzer, George W. Williams, Andrew Simonds, Louis D. Desaussure, Chas. T. Lowndes, A. O. Andrews, Solomon S. Solomons, Henry A. Middleton, C. H. Manson, The People's National Bank of Charleston, The First National Bank of Charleston, The Bank of Charleston, National Banking Association, The Carolina Savings Bank of Charleston, The South Carolina Loan and Trust Company, The People's Bank of South Carolina, The Union Bank of South Carolina, The Home Insurance Company of Charleston, The Carolina National Bank of Columbia, John Gadsden, the younger; T. N. Lucas, Edward L. Horlbeck, Franklin B. Hagood, Clarence B. Cochran, Henry Winthrop, John C. Cochran, executor; Charles F. Desaussure, Joseph Winthrop, executor; John B. Lance, trustee; Peter C. Gaillard, treasurer; E. N. Solomons, Edward Magrath, Arthur B. Rose, trustee; The People's Savings Institution, The Union Kilwinning Lodge No. 4 of Ancient Free Masons, M. H. Valentine, Thomas W. Porcher, James G. Drayton, The National Bank of Chester, and The National Bank of Greenville, their agents and attorneys, enjoining and restraining them and each of them from taking any steps or doing or suffering any act towards the enforcement of any actual or pretended lien which they or either of them, as holders of the floating debt of the said South Carolina Railroad Company, secured
97 by bonds issued and owned by the said company, whether known as first-mortgage bonds or second-mortgage bonds, or by a specific pledge of the income of said company, may claim to have; and, further, enjoining and restraining them from parting

with or disposing, whether by sale, assignment, or otherwise, of the said first-mortgage bonds or second-mortgage bonds or coupons of such bonds which they or any of them may hold in pledge and as collateral security for the payment of moneys due and to become due and owing to them by the said South Carolina Railroad Company, except so far as the same may be permitted by this court; and, further, enjoining and restraining the said defendants, James S. Gibbes, Francis J. Pelzer, George W. Williams, Henry Gourdin, and Louis D. Desaussure, their agents and attorneys, and each of them, from selling or parting with any of the coupons of first-mortgage bonds or coupons of second-mortgage bonds of said company which they claim to hold by purchase and which matured prior to the first day of July, 1878, until the further order and decree of this court.

HUGH L. BOND,
Circuit Judge.

September 19, 1878.

98 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In Circuit Court.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing order is a true copy of original now on file in my office.

[SEAL.] Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., this the 18th day of March, 1881.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

A true copy.
[SEAL.]

W. W. SALE,
C. C. P. & G. S.

99 [Endorsed:] State of South Carolina, Charleston county. Common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company and others. Petition of John H. Fisher, receiver of the S. C. R. R. Co., to remove the cause. D. T. Corbin, sol. *pro* pet. Filed Mar. 22d, 1881.

100 THE STATE OF SOUTH CAROLINA,
County of Charleston.

Know all men by these presents that I, John H. Fisher, receiver of the property of the South Carolina Railroad Company, as principal, and Andrew Simonds, as security, are held and firmly bound unto Henry Thomas Coghlan in the penal sum of two hundred and fifty dollars; the payment whereof, well and truly to be made unto the said Henry Thomas Coghlan, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and sever-

ally and firmly by these presents; yet upon these conditions: The said John H. Fisher, receiver, &c., having petitioned the court of common pleas for the county of Charleston, in said State of South Carolina, for the removal of a certain cause pending therein, wherein Henry Thomas Coghlin is plaintiff and The South Carolina Railroad Company, H. Pinckney Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, copartners under the name and style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran are defendants, to the circuit court of the United States in and for the district of South Carolina, fourth circuit:

101

Now, if said John H. Fisher, receiver of the property of the South Carolina Railroad Company, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 18th day of March, A. D. 1881.

JOHN H. FISHER, [SEAL.]
Receiver South Carolina Railroad Co.
ANDREW SIMONDS. [SEAL.]

102 STATE OF SOUTH CAROLINA, }
Charleston County. }

Andrew Simonds, the person named in and who executed the foregoing obligation, being duly sworn, says that he is a resident of the city of Charleston and a householder and worth more than five hundred dollars over and above all debts and exclusive of property exempt by law from execution.

ANDREW SIMONDS.

Subscribed and sworn to before me this 18th day of March, A. D. 1881.

[SEAL.] DWIGHT HUGHES,
Notary Public.

A true copy.

[SEAL.] W. W. SALE,
C. C. P. & G. S.

103 [Endorsed:] The State of South Carolina, Charleston county. Common pleas. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company and others. Bond for removal of cause. Filed Mar. 22d, 1881.

104 THE STATE OF SOUTH CAROLINA, *County of Charleston.*

In the Common Pleas.

HENRY THOMAS COGHLAN, Plaintiff, *against* THE SOUTH CAROLINA RAILROAD COMPANY and Others, Defendants. } Objections on Behalf of Plaintiff to the Removal of the Cause.

The plaintiff objects to the removal of this cause from this court to the United States circuit court for the district of South Carolina under the petition and bond filed herein on the 22d day of March, 1881, on the following grounds, among others, to wit:

I. The receiver of the property of the company is not the proper party to make the petition.

II. The petition and bond filed herein on the 22d day of November, 1880, have been already passed upon by this court and have not been withdrawn.

III. The petition and bond filed herein on the 22d day of March, 1881, are too late.

IV. The latter petition, taken in connection with the pleadings, fails to show that there is a "controversy" between the plaintiff and the South Carolina Railroad Company; and,

V. Admitting that there is a "controversy" between them,
105 the petition, taken in connection with the pleadings, fails to show that such controversy is wholly between them and can be fully determined as between them.

VI. All the other defendants herein besides the South Carolina Railroad Company, especially the subsequent mortgagees, are absolutely necessary parties and not nominal parties.

VII. The plaintiff herein and the class of bondholders whom he represents not being named in the suit of Calvin Claflin and others against The South Carolina Railroad Company and others in the U. S. circuit court, and not having been served with process therein, and not having intervened therein, and not being necessary parties thereto, as their lien is prior to that of the complainant in said suit, their rights are therefore unaffected and unimpaired by the pendency of said suit, so far at least as they do not attempt to lay hands upon the property of the South Carolina Railroad Company while under the rightful control of the U. S. circuit court.

VIII. If the petitioner moves under the first subdivision of sec. 2 of the act of Congress of March 3, 1875, all the parties on his side of the controversy must join in the petition; or if all the other parties than the petitioner are on the side of the controversy oppo-
106 site to him, then the controversy is not altogether between persons of different citizenship, some of them being citizens of the same State as petitioner.

IX. If the petitioner moves under the second subdivision of the said section and conced*ing* that the controversy is wholly between

the plaintiff and the So. Ca. R. R. Co., then it is not a controversy "between citizens of different States."

T. W. BACOT,
Pl'ff's Att'ys.

In the Common Pleas, Charleston County, State of South Carolina.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and JAMES M. CALDER, and Others, Defendants.

THE STATE OF SOUTH CAROLINA,
County of Charleston.

Before me personally appeared H. Pinckney Walker, who, being duly sworn, says that he is a party defendant to the above-entitled action, and that he has appeared and filed an answer therein.

That he (deponent) is an alien and a British subject, and
107 is not a citizen of the United States or of any one of the United States.

H. P. WALKER.

Sworn to and subscribed before me this 24th day of March, A. D. 1881.

[SEAL.] H. L. P. BOLGER,
Notary Public.

A true copy.
[SEAL.] W. W. SALE,
C. C. P. & G. S.

108 [Endorsed:] State of South Carolina, Charleston county. In the common pleas. Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company and others, defendants. Objection on behalf of plaintiff to removal of the cause under the petition and bond filed on 22d March, 1881. Filed 24 March, 1881.

109 Office C. C. P. & G. S., Charleston County.

CHARLESTON, S. C., 1 *April*, 1881.

I, W. W. Sale, clerk of the court of C. P. & G. S. for Charleston county, do hereby certify the foregoing 69 pages to be a true and correct copy of the original record in the case of Henry Thomas Coghlan against The South Carolina R. R'd Co. *et al.* on file in my office

[SEAL.] W. W. SALE,
C. C. P. & G. S.

Filed April 4, 1881.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

110 UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

On hearing the motion to remand the above cause, counsel on both sides having been heard, it is ordered that said motion to remand be denied, and that the above cause be referred to J. E. Hagood, Esq., as special master, to take an account of the bonds of the plaintiff and of such other parties as may upon due petition be allowed to prove their bonds herein and report the same to this court.

April 18, 1881.

HUGH L. BOND, *C't Judge.*

Filed 18th day of April, 1881.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

111 HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

Removed from the court of common pleas for Charleston county, State of South Carolina, to the United States circuit court for the district of South Carolina, fourth circuit, in equity.

Please take notice that I desire the evidence to be adduced on behalf of the plaintiff in the above-entitled cause to be taken orally. And, further, that I shall move the court on the 1st day of October proximo, or as soon thereafter as counsel may be heard, for an order appointing Joshua Nunn, Esquire, vice and deputy consul general at London, England, as examiner for said purpose.

Charleston, S. C., 23d September, 1881.

T. W. BACOT,
Pl'ff's Att'y.

112 To Messrs. D. T. Corbin, H. E. Young, Brawley & Barnwell, Geo. R. Walker, Thos. M. Hanckel, A. T. Smythe, B. H. Rutledge, Buist & Buist, Lord & Inglesby, Rutledge & Young.

We acknowledge service of the within notice this 23d day of September, 1881.

RUTLEDGE & YOUNG.
H. E. YOUNG,
P'r PERRY.
B. H. RUTLEDGE.
A. T. SMYTHE,
BUIST & BUIST.
LORD & INGLESBY.
BRAWLEY & BARNWELL.
GEO. R. WALKER.
MITCHELL & SMITH.
THOS. M. HANCKEL.

Filed 7 October, 1881.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

113 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

To Messrs. D. T. Corbin, Henry E. Young, George R. Walker, Brawley & Barnwell, T. M. Hanckel, B. H. Rutledge, A. T. Smythe, Buist & Buist, Lord & Inglesby, and Rutledge & Young:

Take notice that the undersigned will apply to J. E. Hagood, clerk of the court aforesaid, on Monday, the 20th day of February, 1882, at 12 o'clock meridian, to issue a commission to examine on the accompanying interrogatories Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, Esquire, and Richard Biddulph Martin, of 68 Lombard street, London, England,
114 banker, senior partner in the banking firm of Martin & Company, of the same place, as witnesses for and on behalf of the plaintiff in the above-entitled cause.

The plaintiff names as commissioners—

1. Stephen Cracknall, of 3 New Square, Lincoln's Inn, London, England, Esquire, barrister.

2. Richard Quseley Blake Lane, of 3 Tanfield Court Temple, London, England, Esquire, barrister.

9th February, 1882.

T. W. BACOT,
Pl'ff's Att'y.

Service of the within notice and accompanying interrogatories acknowledged this 9th February, 1882.

D. T. CORBIN,
Solicitor for J. H. Fisher, Receiver.
BUIST & BUIST.
H. E. YOUNG,
For Self & G. R. Walker.
RUTLEDGE & YOUNG.
B. H. RUTLEDGE.
BRAWLEY & BARNWELL.
LORD & INGLESBY.
A. T. SMYTHE,
Per J. M. B.
THOS. M. HANCKEL.

Filed 9 Feb'y, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

115 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS GOGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

Interrogatories to be propounded to Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, Esquire, and Richard Biddulph Martin, of 68 Lombard street, London, England, banker, senior partner in the banking firm of Martin & Company, of the same place, as witnesses for and on behalf of the plaintiff in the above-entitled cause, to wit:

Interrogatory I. What is your name, age, residence, and occupation?

116 Interrogatory II. What is your connection with this cause or any of the parties hereto?

Interrogatory III. Are you the holder or owner of any of the bonds of the defendant railroad company? If yea, state in detail the kind and number of such bonds and the time when and the way you became possessed thereof.

Interrogatory IV. If you say that you are the holder or owner of any bonds of the defendant railroad company state whether such bonds are the original bonds of which you became possessed or whether such original bonds have been exchanged by you for others.

Interrogatory V. If you say that you are the holder or owner of any bonds of the defendant railroad company state whether such bonds have matured; and, if so, when they matured.

Interrogatory VI. If you say that such bonds have matured state what action (if any) you took upon the maturity
117 thereof; and if you have any leters or other writings in respect to the same annex them as exhibits hereto.

Interrogatory VII. If you say that you are the holder or owner of any bonds of the defendant railroad company, and that such bonds have matured, state whether you have ever entered into any agreement or made any new contract with the said company or its agents since the maturity of such bonds respecting such bonds or the debt which they evidence, and if you have any letters or other writings in respect to the same annex them as exhibits hereto.

Interrogatory VIII. If you say that you are the holder or owner of any bonds of the defendant railroad company, and that such bonds have matured, state whether you have ever received from the said company or its agents any moneys on account of such bonds since their maturity. If so, state all the circumstances attending the same, and if you have any letters or other writings in respect to the same annex them as exhibits hereto.

118 Interrogatory IX. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. W. BACOT,
Plaintiff's Att'y.

Filed 9th Feb'y, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

119 THE UNITED STATES OF AMERICA, }
South Carolina District. }

The President of the United States of America to Stephen Cracknall, of No. 3 New Square, Lincoln's Inn, London, England, Esquire, barrister; Richard Ouseley Blake Lane, of 3 Tanfield Court, Temple, London, England, Esquire, barrister, Greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit, in the district of South Carolina, between Henry Thomas Coghlan, plaintiff, against The South Carolina Railroad Company and others, defendants, and it being necessary to the investigation of the said cause that certain persons resident in London, in England, should be examined on certain interrogatories: Now, know ye that in confidence of your prudence, ability, and integrity you are appointed and by these presents full power and authority are given to you or any two or more of you to examine all witnesses whatsoever, as well on the part of the said plaintiff as on the part of the said defendants or either of them, upon

interrogatories, and therefore you or any two or more of you are hereby authorized and required, on certain days and at cer-
120 tain places to be appointed by you for that purpose, to cause such witnesses to come before you and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken before you or any two or more of you, and to reduce their depositions to writing and return this writ to the clerk of the said court, at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed, and you and every of you are hereby further required that, before you proceed to swear and examine any witness, you severally take the oath first specified in the schedule hereunto annexed, and any one of you is hereby authorized and empowered to administer such oath to the other or others of you; and you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid before such clerk is permitted to act or be present at such examination.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the twentieth day of February, in the year of our
121 Lord one thousand eight hundred and eighty-two, and in the 106 year of the sovereignty and Independence of the United States of America.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Commissioner's Oath.

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed upon the interrogatories now produced and left with you, and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the commission named or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the United States, so help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed as far forth as you are

directed and employed by the said commissioners or any of them to take and write down and engross the said depositions or any of them, and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken or written down, transcribed or engrossed, by you or whereto you shall have recourse or be any way privy until publication shall pass by rule or order of the circuit court of the United States, so help you God.

Instructions for the Commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed the interrogatories and depositions are to be annexed to the commission and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause and seal the packet with their seals and write their names across the seals and direct it to the clerk or register by whom the commission is signed.

If the commission is returned by post one of the commissioners will sign a memorandum on the outside to certify that the enclosed was lodged by him in the post office.

122 UNITED STATES OF AMERICA,
Fourth Court, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY Walker and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai & Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

The deposition (referred to in the annexed certificate of Stephen Cracknall and Richard Ouseley Blake Lane) of Henry Thomas Coghlan, the plaintiff in the above action.

Interrogatory I:

Q. What is your name, age, residence, and occupation?

A. My name is Henry Thomas Coghlan. I am 68 years of age.

I reside at No. 14 Hyde Park Gardens, London, England. I have no occupation. I am a private gentleman.

123 Interrogatory II:

Q. What is your connection with this cause or any of the parties hereto?

A. I am the plaintiff in this cause. I have no other connection with any of the parties thereto.

Interrogatory III:

Q. Are you the holder or owner of any of the bonds of the defendant railroad company? If yea, state in detail the kind and number of such bonds and the time when and the way you became possessed thereof.

A. I am the holder and owner of six bonds of £500 sterling each of the United States of America, State of South Carolina, five per cent. loan, Louisville, Cincinnati and Charleston railroad, now called The South Carolina Railroad Company, one of the above-named defendants. Each of the said bonds is dated the 31st December, 1838, and they are numbered respectively 18, 19, 20, 21, 22, and 23. I am also the holder and owner of twelve similar bonds for £250 each, dated the 31st December, 1838, and numbered respectively 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37. I became possessed of all the aforesaid bonds by purchase on the 25th June, 1842.

Interrogatory IV:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company, state whether such bonds are
124 the original bonds of which you became possessed or whether such original bonds have been exchanged by you for others.

A. The aforesaid bonds are the original bonds of which I became possessed, and have never been exchanged by me for others.

Interrogatory V:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company state whether such bonds have matured; and, if so, when they matured.

A. The aforesaid bonds have matured, and did so mature on the 1st day of January, 1866.

Interrogatory VI:

Q. If you say that such bonds have matured state what action, if any, you took upon the maturity of the said bonds, and if you have any letters or other writings in respect of the same annex them as exhibits hereto.

A. Subsequently to the maturity of the aforesaid bonds, and on the 23d April, 1867, I, through my bankers, Messrs. Martin & Co., of London, caused them to be protested for want of payment by a notary public, one Thomas Edward Newton, since deceased. The paper-writing now produced and shewn to me, marked C 1, annexed hereto, is such protest. Besides the said protest, I have a

certificate by the vice-consul of the United States of America
125 at London of the death of the said notary. The paper-writing now produced and shewn to me and marked C 2, annexed hereto, is the said certificate.

Interrogatory VII:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company and that such bonds have matured, state whether you have ever entered into any agreement or made any new contract with the said company or its agents since the maturity of such bonds respecting such bonds or the debt which they evidence, and if you have any letters or other writings in respect to the same annex them as exhibits hereto.

A. I have never entered into any agreement or new contract since the maturity of the aforesaid bonds respecting such bonds or the debt which they evidence. I have the letters and copies of letters in respect of the said bonds since their maturity, which are now produced and shewn to me, and marked respectively C 3, C 4, C 5, C 6, C 7, C 8, C 9, C 10, C 11, C 12, C 13, and C 14, and annexed hereto.

Interrogatory VIII:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company and that such bonds have matured, state whether you have ever received from the said company
126 or its agents any monies on account of such bonds since their maturity; if so, state all the circumstances attending the same, and if you have any letters or other writings respecting the same annex them as exhibits hereto.

A. I have received through my bankers, Messrs. Martin & Co., from the said company, through its agents, Messrs. Dent, Palmer & Co., certain monies on account of the aforesaid bonds since their maturity. The amount of such monies, with the dates on which they were respectively paid, respectively appear endorsed upon the said bonds. I have received such monies under the distinct understanding with Messrs. Dent, Palmer & Co., the agents of the said defendant company, that the receipt of such monies should not in any way prejudice any rights I might have for or in respect of the aforesaid bonds. Such understanding appears by the exhibits referred to in my answer to the 7th interrogatory. The circumstances attending the receipt and payment of the said monies on account of the said bonds also fully appear by the aforesaid exhibits. The said exhibits, as hereinbefore appears, refer to the said monies so received on account. Those of the said exhibits which purport to be communications from me to my bankers, Messrs. Martin, are copies of letters addressed by me to them on the respective
127 dates which they purport to bear. The said copies were made by myself before sending the originals to Messrs. Martin, and are in every respect true and correct copies. I have been informed by the said Messrs. Martin that they have destroyed the originals of the said copies in accordance with the practice of their

business, to destroy all correspondence after it has been in their hands for ten years.

Interrogatory IX:

Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. The letter of the said Messrs. Dent, Palmer & Co. of the 4th May, 1880, to the said Messrs. Martin & Co., hereto annexed and marked C 15, shows that they admit that eleven half years' interest were unpaid, *videlicet*, seven coupons and four half years' interest, but not, as in error stated in the said letter, eight coupons and three half years' interests.

H. T. COGHLAN.

128 Signed by the above-named Henry Thomas Coghlan in the presence of us, the undersigned.

STEPHEN CRACKNALL.
R. O. B. LANE.

129 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER and James M. Calder; John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

The deposition (referred to in the annexed certificate of Stephen Cracknall and Richard Ouseley Blake Lane) of Richard Biddulph Martin.

Interrogatory I:

Q. What is your name, age, residence, and occupation?

A. My name is Richard Biddulph Martin; I am 44 years of age; I am a banker and the senior member of the firm of Messrs. Martin & Co., bankers, of Lombard street, London, England; I am
130 a member of Parliament.

Interrogatory II:

Q. What is your connection with this cause or any of the parties hereto?

A. My said firm have been bankers for the plaintiff previous to

and since the year 1849, and as a member of my said firm I have had several communications on the plaintiff's behalf with Messrs. Dent, Palmer & Co., agents in London of the defendant company, with reference to the bonds of the said company held by the plaintiff and forming the subject-matter of this action.

Interrogatory III:

Q. Are you the holder or owner of any of the bonds of the defendant railroad company? If yea, state in detail the kind and number of such bonds and the time when and the way you became possessed thereof.

A. From the knowledge and information which I have acquired in my capacity of the plaintiff's banker I am able to state that the plaintiff is the holder and owner of 6 bonds for £500 sterling each of the United States of America, State of South Carolina, 5 per cent. loan, Louisville, Cincinnati and Charleston railroad, now called the South Carolina Railroad Company, one of the above-named defendants, respectively dated the 31st December, 1838, and numbered respectively 18, 19, 20, 21, 22, and 23, and also of 12 similar bonds for £250 sterling each, dated respectively the 31st December, 1838, and numbered respectively 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37. The payment and redemption of the aforesaid bonds was guaranteed for the 1st day of January, 1866. My said firm have had possession of the aforesaid bonds as the plaintiff's bankers since the year 1860, to my personal knowledge, and I know further by repute in my said firm that they have had possession of them since the year 1849. My said firm have had possession of the said bonds until the commencement of these proceedings, and they have been accustomed to collect all monies paid in respect thereof on behalf of the plaintiff. I am not myself the owner nor, except as above mentioned, am I the holder of any of the bonds of the defendant company.

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Interrogatory IV:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company, state whether such bonds are the original bonds of which you became possessed or whether such original bonds have been exchanged by you for others.

A. I say that the aforesaid bonds are the original bonds of which my said firm became possessed as the plaintiff's bankers. They have never been exchanged by the plaintiff for others in the period during which my said firm has had possession of them.

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Interrogatory V:

Q. If you say you are the owner or holder of any bonds of the defendant railroad company, state whether such bonds have matured; and, if so, when they matured.

A. The aforesaid bonds matured on the 1st January, 1866.

Interrogatory VI:

Q. If you say that such bonds have matured, state what action, if

any, you took upon the maturity thereof; and if you have any letters or other writings in respect to the same, annex them as exhibits hereto.

A. On the 23d day of April, 1867, my said firm, as the plaintiff's bankers, caused the aforesaid bonds to be protested by a notary public (Thomas Edward Newton, since deceased) for want of payment, and the paper-writing now produced and shewn to me, marked C 1, annexed to the deposition of the plaintiff, is such protest.

Interrogatory VII:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company and that such bonds have matured, state whether you have ever entered into any agreement or made any new contract with the said company or its agents since the ma-
133 turity of such bonds respecting such bonds or the debts which they evidence; and if you have any letters or other writings in respect to the same, annex them as exhibits hereto.

A. My said firm, acting as the plaintiff's bankers or otherwise, have never entered into any agreement or made any new contract with the company or its agents since the maturity of such bonds respecting such bonds or the debt which they evidence. My said firm received on behalf of the plaintiff the circular letter, dated 22d March, 1869, signed by Dent, Palmer & Co. and addressed to my said firm, hereto annexed and marked C 3. My said firm wrote the letter to the plaintiff dated March 24th, 1869, annexed hereto and marked C 4, and also the letter to the plaintiff dated 29th March, 1869, annexed hereto and marked C 5, and the letter to the plaintiff dated 30th March, 1869, annexed hereto and marked C 7, and the letter dated 31st March, 1869, annexed hereto and marked C 9, and the letter to plaintiff dated the 7th April, 1869, annexed hereto and marked C 11, and the letter to plaintiff dated the 13th April, 1869, annexed hereto and marked C 13, and the letter to the plaintiff dated the 14th April, 1869, annexed hereto and marked C 14. My said firm have not the plaintiff's letters to us in answer to the foregoing letters, as it has always been the custom of
134 our house to destroy letters more than ten years old on account of the extent of our correspondence, and the said letters of the plaintiff to us had been destroyed by us in accordance with such practice before the commencement of these proceedings.

Interrogatory VIII:

Q. If you say that you are the holder or owner of any bonds of the defendant railroad company and that such bonds have matured, state whether you have ever received from the said company or its agents any monies on account of such bonds since their maturity. If so, state all the circumstances attending the same, and if you have any letters or other writings in respect to the same annex them as exhibits hereto.

A. My said firm have received, as bankers and agents of the plaintiff, from the defendant company, through its agents, Messrs. Dent, Palmer & Co., monies on account of the aforesaid bonds since their

maturity. The several amounts of such monies, with their respective dates of payment, appear endorsed upon the said bonds. We received such monies under the understanding that the receipt of such monies should not in any way prejudice any of the rights which the plaintiff might have for or in respect of the aforesaid bonds, as appears by the exhibits referred to in my answer to the 7th interrogatory. The understanding referred to was
135 arrived at at interviews held between Dent, Palmer & Co. at their office, 11 King's Arms Yard, in the city of London, and sometimes myself, sometimes some other member of my said firm, and sometimes William Pegler Sanigear, the managing clerk of my said firm. These interviews took place in the months of March and April, 1869, and principally in March. The said Messrs. Dent, Palmer & Co., or their representative, stated to me at such of the said interviews as were held with myself that the receipt of the above-mentioned moneys would not prejudice any rights which the plaintiff might have for or in respect of the aforesaid bonds, or to that effect. The said William Pegler Sanigear has died, but immediately after such of the aforesaid interviews as were held with him he, in the course of his business as managing clerk to my firm, reported to me that similar statements were made at the said interviews to him by the said Dent, Palmer & Co. This information which, as I have said, was given to me by him at the time of the said interviews with him, was thereupon communicated by me to to the plaintiff.

Interrogatory IX:

Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the sub-
136 ject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. My said banking firm received from the said Messrs. Dent, Palmer & Co. the letter of the 4th of May, 1880, hereto annexed and marked C 15, admitting that 11 half years' interest were unpaid.

(Signed) RICHARD B. MARTIN.

Signed by the said Richard Biddulph Martin in the presence of us, the undersigned:

STEPHEN CRACKNALL.
R. O. B. LANE.

137 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY, H. PINCKNEY WALKER, and James M. Calder, John Hanckel, Robert Adger, and Benjamin F. Huger; David Mordecai and J. Randolph Mordecai, Copartners under the Name and Style of Mordecai and Company; George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Ballard, and John Clarence Cochran, Defendants.

We hereby certify that, under and by virtue of the commission issued to us in the above cause out of the above court on the 20th of February, 1882, we did appoint the 17th of March, 1882, at 2 o'clock in the afternoon, at the chambers of the undersigned, Stephen Cracknall, No. 3 New Square, Lincoln's Inn, London, England, for the examination upon the interrogatories annexed to the said commission of Henry Thomas Coghlan, the plaintiff in the said cause, and of Richard Biddulph Martin as witnesses on the part of
138 the said plaintiff; and, in pursuance of the said appointment and commission, an examination of the said plaintiff and of the said Richard Biddulph Martin, each of them apart from the other, upon the said interrogatories upon their respective corporal oaths, first taken before us, was had and taken before us on the date and at the time and place so appointed for the same; and, in pursuance of the said commission, we did, before proceeding to swear and examine the said witnesses, severally take the oath first specified in the schedule annexed to the said commission, each of us having administered the said oath to the other; and, in pursuance of the said commission, Thomas King, clerk to the said Stephen Cracknall, was employed in taking the depositions of the said witnesses, and before the said clerk was permitted to act or to be present at the said examination we did administer to him the oath last specified in the aforesaid schedule, and the examination as aforesaid of the said witnesses respectively upon the said interrogatories and the answers given by them respectively thereto are contained in their depositions, signed by them respectively and attested by us, and which, together with the said interrogatories and this our
139 certificate, are annexed to the said commission.

Given under our hands and seals the twenty-eighth day of March, 1882.

STEPHEN CRACKNALL, [SEAL.]
3 *New Square, Lincoln's Inn, London.*
R. O. B. LANE, [SEAL.]
3 *Tanfield Court, Temple, London.*

140 R. O. B. Lane. C 1. S. C.

No. 18. £500 st'g. C. £500 st'g.

UNITED STATES OF AMERICA, *State of South Carolina.*

Five Per Cent. Loan.

The Louisville, Cincinnati & Charleston Railroad Company, under the gurantee of the State of South Carolina, promise to pay to bearer five hundred pounds sterling, redeemable on the first day of January, one thousand eight hundred and sixty-six, and not before without the consent of the holder of this certificate, with interest thereon at the rate of five per cent. per annum from the date hereof, the said interest to be paid semi-annually, on the first days of January and July, on presenting the proper coupons for the same at the house of Palmers, Machellop, Dent & Co., London, where the principal will also be redeemed on the surrender of this certificate.

In witness whereof the said company has caused its corporate seal to be hereunto affixed, at Charleston, this 31st day of December, 1838.

[L. S.]

ROB'T Y. HAYNE, *President.*
E. H. EDWARDS,
Sec'y & Treas'r.

(*Copy of One of the Warrants or Coupons.*)

Louisville, Cincinnati and Charleston Railroad Company warrant No. 49, for £12 10*s.*, being half-yearly interest on bond C, No. 18, payable January 1st, 1863.

£12 10*s.* E. H. EDWARDS, *Treas'r.*

141 Six other warrants, as above, for £12 10 each, numbered 50, 51, 52, 53, 54, and 55, repectively, payable half-yearly from July 1st, 1863, to January 1st, 1866, both inclusive.

(Endorsed.)

An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company and for other purposes.

Be it enacted by the Senate and House of Representatives now met and sitting in General Assembly, and by the authority of the same, That the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contract which shall be made for borrowing money by the Louisville, Cincinnati and Charleston Railroad Company from any person or persons, company or companies, corporation or corporations, to any amount not exceeding two millions of dollars, either in the United States or in Europe, and when such contract or contracts shall be made by bond or bonds, certificate or certificates, or other instrument or instruments signed by the president of the said com-

pany, under its seal and countersigned by the secretary thereof,
142 it shall be the duty of the comptroller general of this State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, both as it respects the punctual payment of the principal and of the interest, according to the terms of the said contract or contracts: Provided, that the interest to be received thereby and made payable thereon shall not exceed the rate of five per cent. per annum; and provided, also, that the comptroller general shall not endorse any such contract until five hundred thousand dollars shall be paid to the company on the stock thereof, in which event he shall pledge the funds and faith of the State for one million of dollars; and when five hundred thousand dollars more shall be paid to the company on the stock thereof the comptroller general shall pledge the funds and faith of the State for one other million of dollars.

In the senate-house the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-second year of the sovereignty and Independence of the United States of America.

PATRICK NOBLE,
President of the Senate.
D. L. WARDLAW,
Speaker of the House of Representatives.

143 The conditions of the above act having been faithfully complied with, I do hereby, for and in behalf of the State of South Carolina, endorse her guaranty on this bond for the payment and redemption of the principal and interest of the same.

(Signed) WM. ED. HAYNE,
Comptroller.

The coupons are endorsed as follows, viz: "Payable at Messrs. Palmers, Machillop, Dent & Co."

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One other bond, No. 19, for £500, as above, with 7 similar warrants attached to each for £12 10s. each.

Ditto	"	20,	"	500,	"	"	7	"	"	"	12 10s. "
Ditto	"	21,	"	500,	"	"	7	"	"	"	12 10s. "
Ditto	"	22,	"	500,	"	"	7	"	"	"	12 10s. "
Ditto	"	23,	"	500,	"	"	7	"	"	"	12 10s. "
Ditto	"	26,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	27,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	28,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	29,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	30,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	31,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	32,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	33,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	34,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	35,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	36,	"	250,	"	"	7	"	"	"	6 5s. "
Ditto	"	37,	"	250,	"	"	7	"	"	"	6 5s. "

145 "B."

In the United States Circuit Court in Charleston.

In the Matter of the Petition of HENRY THOMAS COGHLAN.

This is the paper-writing, marked "B," referred to in the affidavit of Richard Biddulph Martin, sworn in this matter before me this tenth day of May, 1880.

JAMES W. COMERFORD, *Not. Pub.*

C 1. S. Cracknall. (B.)

On the twenty-third day of April, one thousand eight hundred and sixty-seven, at the request of the holder, I, Thomas Edward Newton, notary public, by lawful authority admitted and sworn, dwelling in London, went with eighteen certain original bonds of the State of South Carolina, whereof a copy of one and description of the others are on the other side written, and attached to each of which said bonds are seven coupons (a copy of one and description of the others being also on the other side written), to the counting-house of Messrs. Dent, Palmer & Co., late Palmers, Mackillop, Dent & Co., where the same are made payable, the principal thereof
146 having become due, and demanded payment of the said bonds, together with all interest thereon, which demand was not complied with, and a gentleman answered that they had no funds to pay the said bonds and coupons.

Wherefore I, the said notary, at the request aforesaid, did and do by these presents protest, as well against the said State of South Carolina as all others whom it doth or may concern, for exchange and re-exchange, costs, damages, and interest, suffered and to be suffered, for want of payment of the said bonds and coupons. Thus protested in the presence of Rudolph C. Nichol & Charles S. Bentley, witnesses.

£4 4 0.

In testimonium veritatis.

[SEAL.] THOS. EDW'D NEWTON, *Not. Pub.*

147 C 2. S. Cracknall. C 2. S. C.; R. O. B. L.

Consulate general of the United States of America for Great Britain & Ireland, at London.

I, Joshua Nunn, vice and deputy consul general and notary public *ex officio* of the United States of America at London, England, do hereby make known and certify to all whom it may concern that on the 23d day of April, A. D. 1867, Thomas Edward Newton (since deceased), who hath signed the annexed certificate, was a notary public, duly admitted and sworn and practising in the city of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my seal of office, at London aforesaid, this third day of May, in the year of our Lord one thousand eight hundred and eighty.

J. NUNN.

148 C 3. S. C.; R. O. B. L.

11 KING'S ARMS YARD, LONDON, 22*nd March*, 1869.

Messrs. Martin & Co., Lombard St.

SIRS: We beg to inform you that we have received instructions from the agent of the South Carolina Railway Company to pay the half year's interest due 1st July, 1868, on the new bonds of that company, guaranteed by the State of South Carolina, exchanged through us. We are also directed to make a similar payment on such of the old bonds held in this country as have not yet been exchanged.

The coupons will have to be left at our counting-house two clear days for examination. Printed forms can be had on application.

We are, sirs, your obedient servants,

DENT, PALMER & CO.

149 C 4. S. C.; R. O. B. L.

68 LOMBARD ST., *March* 24, 1869.

DEAR SIR: We beg to enclose a circular from Mess. Dent, Palmer & Co. with reference to the S. Carolina bonds. We shall be glad to receive your instructions before sending in the coupons for payment.

We are, sir, your obed. servants, MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

150 C 5. S. C.; R. O. B. L.

68 LOMBARD STREET, *March* 29, 1869.

SIR: We have referred your letter of the 24th inst. to Messrs. Dent, Palmer & Co. They tell us "that they have no authority to say that the State of South Carolina refuses to exchange the old bonds for new bearing the guarantee of the State. The guarantee is practically the same, though not in the identical words of the old one. It must be borne in mind that the guarantee is given at a different period of the State's existence."

Messrs. Dent, Palmer & Co. consider that the receipt of the July, 1868, dividend will not commit you in any way. Coupons from 1st January, '63, to 1 January, '66, both inclusive, remain attached to the bonds.

We could not undertake to express any opinion as to the powers of the new guarantee. We think you had better consult a solicitor on the point.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

151 C 6. S. C.; R. O. B. L.

HYDE PARK GARDENS, *March 30th*, '69.

GENTLEMEN: I have to acknowledge the receipt of your letter of the 29th inst. Could you favor me with a copy of the new South Carolina Railway Company's bonds, with the guarantee by the State?

I remain, gentlemen, your obedient servant,

H. T. C.

Messrs. Martin, 68 Lombard St., city.

152 C 7. S. C.; R. O. B. L.

68 LOMBARD ST., *March* 30, 1869.

SIR: In consequence of your letter of this date we have applied to Messrs. Dent, Palmer & Co. for a copy of the S. Carolina new bonds. Those gentlemen say that they cannot give a copy of the bonds; neither can they guarantee that bonds to be issued hereafter shall be the same as those that have been issued up to this time. They would allow any one to inspect a bond if they had one in their office, which they do not often have now. We are afraid, therefore, that we cannot assist you farther in this matter.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

153 C 8. S. C.; R. O. B. L.

MARCH 31ST, '69.

GENTLEMEN: I have to thank you for the trouble you have taken. I think from Messrs. Dent's answer, if I have been informed right, that the State is unable at present to give the guarantee to the new bonds.

This makes it important that I should do nothing that would affect my protest of the old bonds, so if accepting the interest now offered would do so don't apply for it, but otherwise I should, of course, be glad to have it.

As the company has now means or will soon have I think I should be justified in enforcing payment of those bonds. Can you recommend me any one in America in whose hands to place this business?

I remain, &c. H. C.

Messrs. Martin, 68 Lombard St.

154 C 9. S. C.; R. O. B. L.

68 LOMBARD ST., E. C., *March 31st*, 1869.

DEAR SIR: We have the pleasure to acknowledge the receipt of your letter of this day. Messrs. Dent. & Co. do not think that by receiving the dividend declared on the new bonds you would effect

your protest on the old ones, but as they are merely agents for the State we should say it was more a lawyer's question. Every one with whom we have spoken to on the subject do not consider you will better your position by protesting the bonds, but you may be better advised. We are not acquainted with any one in America who would undertake the business for you.

We remain, dear sir, yours very faithfully,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

155 C 10. S. C.; R. O. B. L.

HYDE PARK GARDENS, *April 5th*, 1869.

GENTLEMEN: It is, of course, impossible for me to take a solicitor's opinion on the new South Carolina railway bonds if Messrs. Dents refuse me a copy of one, but with respect to the interest now offered my solicitor expresses himself as follows:

"I don't think the fact of your receiving a subsequent dividend on your bonds will interfere with your right to recover the overdue ones. You may, at the time of such application, renew your demand for such outstanding claim."

I suppose he means by this for the payment of the overdue bonds and their arrears of interest.

I remain, &c., H. C.

Messrs. Martin, 68 Lombard St., city.

Would you enquire and let me know if Messrs. Barings would be willing to undertake the enforcing of the payment of these overdue bonds in Charleston, South Carolina, or wherever proceedings should be commenced, or, if they are not, any other house?

156 C 11. S. C.; R. O. B. L.

68 LOMBARD ST., *April* 7, 1869.

SIR: We have applied to Mess. Baring Bros. on the subject of your letter of the 5th inst., but those gentlemen decline to have anything to do with enforcing payment against a State.

They tell us that by the Constitution of the United States it is expressly provided that neither the United States as a whole nor any separate State can be sued, nor can any action at law be brought against them, and that if you decline accepting the terms of the State of S. Carolina in the matter of these railway bonds you have absolutely no remedy at all. Under these circumstances it would be useless asking any English house of any standing to undertake your case, and we know no one in Charleston.

We will receive your dividend, as we quite agree with you that it cannot prejudice your claim in any way.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

157 C 12. S. C.; R. O. B. L.

APRIL 8TH, '69.

GENTLEMEN: I hope you applied to Messrs. Dents for the arrears of interest and bonds in the way recommended by my solicitor, as by your letter of the 7th inst. you seem not to be aware that for these bonds I can proceed against the railway if not against the State.

I remain, gentlemen, &c, H. C.

Messrs. Martin, 68 Lombard St., city.

Let me have a line to say what amount you receive.

158 C 13. S. C.; R. O. B. L.

68 LOMBARD ST., *April* 13, 1869.

DEAR SIR: We have received and credited your account with £175 10, being ½ year's dividend on your S. Carolina railway bonds.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

159 C 14. S. C.; R. O. B. L.

68 LOMBARD ST., *April* 14, 1869.

SIR: The £175 10 consists of 5% on your £6,000 bonds for ½ year and ⅙ of the interest which is due to you on the capitalised overdue interest.

Taking this does not compromise or affect your position in the least, and the amount will be allowed you in any subsequent claim or arrangement you may make.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq.

160 C 15 (A). S. C.; R. O. B. L.

11 KING'S ARMS YARD, E. C., LONDON, *May 4th*, 1880.

Messrs. Martin & Co., 68 Lombard street.

DEAR SIRS: The letter of the book-keeper of the South Carolina R. R'd Co. enclosed in your letter of yesterday is entirely in error, as you are no doubt aware, Messrs. Baring Bros. Co. having paid the interest due July. 1878, and January & July, 1879. We return his letter. The statements that were made to you verbally yesterday were correct. We have paid no interest on any bonds for the coupons due January & July, 1867, and January, 1868. The holders of the first-mortgage bonds issued in 1871 received bonds and fractional cash when exchanging their new bonds. The new bonds issued by us in 1867 with the State guarantee in exchange for the old bonds were for £600 & £300 each respectively, and these
161 were given for old bonds of £500 & £250 each respectively, the difference, 20 p'r cent., being the unpaid interest for the

years 1863, 1864, 1865, & 1866. The principal of the 11 coupons we have referred to (803) the holders of the old bonds have no bonds for, and have never received, but interest they have received upon the 8 half year's interest, and also upon the face of the bonds, which is endorsed upon the bonds. The holders of old bonds who surrendered them in exchange for first-mortgage bonds were treated in the same manner as if they had previously exchanged for the new bonds, thus getting also bonds including the 11 half year's interest, but without the State guarantee.

We are, dear sirs, yours faithfully,

DENT, PALMER & CO.

P. S.—The old bonds became due on the 1st January, 1866; hence there were no coupons on them after that date.

D., P. & CO.

162 "A."

In the United States Circuit Court in Charleston.

In the Matter of the Petition of HENRY THOMAS COGHLAN.

This is the paper-writing, marked "A," referred to in the affidavit of Richard Biddulph Martin, sworn in this matter before me this tenth day of May, 1880.

JAMES W. COMERFORD, *Not. Pub.*

163 Endorsements on cover:

This packet was lodged by me in the post office in London on the 29 March, 1882.

R. O. B. LANE.

Received April 12th, 1882.

J. E. HAGOOD, JR.,
D'p'ty Clerk.

164 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*

Report of J. E. Hagood, Special Master.

To the honorable the judges of the circuit court aforesaid:

By an order of this court made in the above-entitled cause on the 18th day of April, 1881, it was referred to me "as special master to take an account of the bonds of the plaintiff and of such other parties as may upon due petition be allowed to prove their bonds herein and report the same to this court."

I respectfully report as follows:

At a reference held before me on the 18th day of May, 1881, at

which were present Messrs. T. W. Bacot, H. E. Young, and H. A. M. Smith for D. T. Corbin, counsel in the cause, the following eighteen (18) bonds of "the Louisville, Cincinnati and Charleston Railroad Company" (endorsed with the guarantee of the State
165 of South Carolina under the act of the General Assembly of the said State of South Carolina of December 20, 1837) were produced before me and proved to be the property of the plaintiff, to wit:

1.	Bond No.	18,	dated 31st December, 1838,	redeemable 1st Jan'y, 1866,	for £500 st'g.
2.	" "	19,	do.	do.	do.
3.	" "	20,	do.	do.	do.
4.	" "	21,	do.	do.	do.
5.	" "	22,	do.	do.	do.
6.	" "	23,	do.	do.	do.
7.	" "	26,	do.	do.	for £250
8.	" "	27,	do.	do.	do.
9.	" "	28,	do.	do.	do.
10.	" "	29,	do.	do.	do.
11.	" "	30,	do.	do.	do.
12.	" "	31,	do.	do.	do.
13.	" "	32,	do.	do.	do.
14.	" "	33,	do.	do.	do.
15.	" "	34,	do.	do.	do.
16.	" "	35,	do.	do.	do.
17.	" "	36,	do.	do.	do.
18.	" "	37,	do.	do.	do.

Aggregating £6,000 sterling.

Each of said bonds recites interest thereon at the rate of five (5) per centum per annum from the date thereof, payable semi-
166 annually on the 1st days of January and July upon presentation of the proper coupons at the house of Palmers, Mackillop, Dent & Co., London, where the principal is also made redeemable upon the surrender of the bond or certificate.

The last seven coupons on each bond (due respectively January 1, 1863, July 1, 1863, January 1, 1864, July 1, 1864, January 1, 1865, July 1, 1865, & January 1, 1866) remain attached and have not been paid, and nothing was paid on said bonds until the 13th April, 1869, from which date payments have been made from time to time, as evidenced by the endorsements on the bonds.

I have had made photograph copies of one of the said £500 bonds and one of the said £250 bonds (all the others being identically the same except as to the number of bond), which are filed herewith as exhibits, and from an inspection of which the foregoing matters will more fully appear.

May 5, 1882.

J. E. HAGOOD,
Special Master.

167 *Testimony Introduced on Behalf of Plaintiff at Reference Held Before Special Master on 18th May,* 1881.

CHARLES F. HARD, being duly sworn, says that Henry Thomas Coghlan is the owner and holder of six bonds of the Louisville, Cincinnati & Charleston Railroad Company for £500 sterling each,

dated December 31, 1838, with seven (7) coupons each, for twelve pounds and ten shillings, numbered 18, 19, 20, 21, 22, 23, the letter "C" being on each bond. There also appears on each of said six bonds the following memorandum in writing:

"Ten, 23 April, 1867."

(A photographed copy of one of said bonds is herewith attached, marked Exhibit —.)

That he is also the owner and holder of 12 bonds of said company for £250 sterling each, dated Dec. 31, 1838, with seven coupons, each for six pounds and five shillings, numbered 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, the letter "C" being on each bond. There also appears on each of said 12 bonds the following memorandum in writing:

"Ten, 23 April, 1867."

(A photographed copy of one of said 12 bonds is herewith attached, marked Exhibit —.)

168 UNITED STATES OF AMERICA,
District of South Carolina.

In Circuit Court.

HENRY THOMAS COGHLAN
vs.
THE SOUTH CAROLINA R. R. Co. *et al.*

A reference was held in the above case this ninth day of May, A. D. 1882.

Present: Mess. Bacot & Young, representing plaintiff, and Messrs. Mitchell & Smith and Corbin, representing defendants.

The following witnesses were examined:

JOHN H. FISHER sworn.

Direct examination by Mr. MITCHELL:

Q. What position do you hold now in reference to the South Carolina Railroad Company?

A. Receiver.

Q. Since when?

A. Since the 28th September, 1878.

Q. Have you had any correspondence with H. T. Coghlan, complainant in this action?

A. Yes.

Q. Did you receive a petition from him to be filed in this court for the payment of his bonds?

169 (Counsel for complainant objects to witness testifying to the contents of papers of any kind, whether petition or letters, unless same are produced or unless the preliminary question is put in regard to his knowledge of complainant's handwriting.)

Q. Mr. Hagood, will you produce the petition?

(Mr. Hagood, clerk of court, here produced petition of H. T. Coghlan, filed in the case of Calvin Claflin *et al. vs.* The South Carolina R. R. Co. *et al.* Defendants' attorney announced the suspension of examination of Jno. H. Fisher and called for the production by the clerk of the file book.

Counsel for complainant object to the suspension of said examination and object to the production of the petition by the clerk unless he is first questioned whether he knows from whom said petition came or acquainted with H. T. Coghlan's handwriting.)

Q. Will you produce, Mr. Clerk, the file book in the case of Calvin Claflin *et al. vs.* The S. C. R. R. Co. *et al.*?

—. ——.

Q. Will you read from that file book the entry made as to this petition?

A. March 18, 1880, there was a petition filed from H. T. Coghlan by D. T. Corbin.

Examination of Mr. FISHER resumed by Mr. MITCHELL:

170 Q. (Hands witness petition.) Will you examine that petition which has been produced by the clerk of court and state whether you received that petition from London?

A. I think this is the same petition that I received in a letter from London.

Q. Whom was it from?

A. From Mr. Coghlan; purported to be from him.

Q. Have you had much correspondence with Mr. Coghlan?

A. Not a great deal. Several letters passed between us.

Q. You have addressed letters to him?

A. Yes.

Q. You have received answers to those letters?

A. I have received answers signed by Mr. Coghlan.

Q. From the party to whom you addressed your correspondence?

A. Yes. I took that for granted in the regular course of correspondence.

Q. Are the signatures to those letters the same as the signature to that petition?

(Counsel for complainant object to a comparison of signatures unless the letters are produced.)

A. I don't know.

Q. From your knowledge of the signature of Mr. Coghlan in the correspondence you had with him is the signature of that petition the signature of Mr. Coghlan?

A. I don't know that I have looked at the signature to the petition.

171 Q. Well, look at it.

(Objected to as above.)

A. I should think it was.

Q. (Hands letter.) Will you examine that letter and state if that was a letter received by you from Mr. Coghlan?

A. I can only say that in the regular course of correspondence I received letters signed by Coghlan. Of course I do not know Mr. Coghlan.

Q. In reply to letters you addressed to him?

A. Yes.

Q. That is one of the letters?

A. Yes.

(Petition introduced in evidence by Mr. Mitchell and marked Exhibit A.)

Q. What did you do with that petition?

A. My recollection is I handed it to Mr. Corbin.

Q. Did it ever get back into your hands?

A. Yes.

Q. How?

A. It was handed to me by Mr. Corbin.

Q. What became of it then? Did you return it to the clerk of the court?

A. Yes.

Q. Was a demand made on you by the clerk of the court for it?

A. Yes.

Q. And in accordance with that demand you handed him the petition?

A. Yes.

172 (Mr. Mitchell introduces letter dated June 15, 1880. Counsel for complainant object on the ground that there is no proof of handwriting.)

Q. Were you in the habit of paying interest upon these bonds of Mr. Coghlan's—Louisville, Cincinnati & Charleston R. R. bonds? Will you state first your method of paying interest upon the bonds in London?

A. I remitted under order of the court to Baring Bros., who were agents for paying interest on these bonds, as well as all the other first-mortgage sterling bonds and guaranteed bonds. They advertised. I have a copy of the advertisement.

Q. You sent the money over to Baring Bros. to pay the interest on the Louisville, Cincinnati & Charleston R. R. past-due bonds?

A. Yes.

Q. What were your instructions to Baring Bros. as to the payment of interest upon the bonds—took duplicate receipts and stamped the bonds, or how?

(Objected to as leading.)

A. Both. On all matured bonds they were to take duplicate receipts.

Q. What was the method of the payment of interest upon the Louisville, Cincinnati & Charleston R. R. past-due bonds in the hands of Coghlan or any other party?

A. I think I had better give the history of the whole thing. In

the first place, I received an order from the court ordering
173 me to pay the interest on the Louisville, Cincinnati & Charleston R. R. bonds—guaranteed bonds and first-mortgage bonds. I then wrote Baring Bros. and remitted them the money, instructing them to do so, and sent them a copy of the order of court, under which they were instructed to take duplicate receipts and stamp on all the matured bonds the interest paid up to the time it was paid. After that they were to send me either the receipts or the coupons that were paid. Of course, they took receipts on the Louisville, Cincinnati & Charleston R. R. bonds, and the receipts were returned to me.

Q. What is the first duplicate receipt you got—for what date?

A. I think the first order was from July, 1878, to January, 1879.

Q. (Hands bond to witness.) Will you read the stamp on that bond?

(Counsel for complainant object to witness testifying because his answer shows he cannot recollect, and object to witness testifying as to date of receipts unless the receipts are produced.)

Q. Read the first receipt stamped upon the original bond.

A. (Reads:) "Paid £15 sterling interest due July 1, 1878, and Jan. 1, 1879, on this bond."

Q. Will you exhibit the duplicate receipt that corresponds to that stamp?

174 A. There would be no particular receipt for that stamp.

Q. Not for the stamp, but for the interest paid at that time.

A. It would be a receipt for the interest on so many bonds.

(Produces receipt, marked Exhibit —.)

Q. Were those receipts sent back to you by Baring Bros., your agents, as receipts for the interest paid upon the bonds held by Coghlan whose numbers are thereto attached?

A. They are the same numbers as the bonds held by Mr. Coghlan, and the receipts also signed by Mr. Coghlan. Sometimes the same number of bond was quoted by Martin and sometimes by Mr. Coghlan himself.

Q. Go on to the next following bond and read the receipt.

(Witness here read the stamps on the bonds.)

Q. Is that the signature of H. T. Coghlan from your knowledge of his signature from the correspondence you had with him?

A. It looks like the signature to the letters I received from him.

Q. In reply to those you addressed to him?

A. Yes.

(Mr. Mitchell introduces Exhibit C.)

Q. Were those stamps placed upon all the bonds by Baring Bros. in London?

A. I presume so.

Q. Did you give instructions for the bonds to be stamped
175 when presented for payment?

A. Yes; and the first stamps I sent over.

Q. Does that correspond with the stamp you sent over?

A. Yes.

Q. I see that this reads: "Bonds of the Louisville, Cincinnati & Charleston R. R. Co., each with eight coupons attached, representing £600 sterling and numbered respect*fu*lly as follows." Now, how is it that there are but seven coupons on that bond? There are seven coupons on all these bonds that they have given receipts for eight overdue coupons.

A. I presume it must have been for an extra six months' interest after the last coupon is due.

Q. That would bring it, then, to what date?

A. That would bring it to 1st July, 1866.

Q. Then you did pay on this bond, treating the bond as if it was a £600 bond due July 1st, 1866?

A. I paid on each £500 bond interest on £600, and on the £250 bonds I paid interest on £300. I did that because I was informed by Mr. Burdell and other parties connected with the road that that had been done years before.

Q. Capitalizing the interest as of the 1st July, 1866?

A. Yes.

Q. Now, in the payment of the interest therefore on those bonds you treated them as £600 bonds at 5 per cent. interest?

A. Yes; and the £250 bonds I treated as £300 bonds at 5 per cent. interest.

176 Cross-examination by Mr. YOUNG:

Q. Did you ever see Mr. Coghlan write?

A. No.

Q. Did you ever see him sign this?

A. No.

Q. You are not at all acquainted with him?

A. No.

Q. (Hands petition to witness.) In whose handwriting is that endorsement on the back?

A. I believe it is Maj. Corbin's.

(The endorsement referred to is as follows: "NOTE.—The petition of H. T. Coghlan, dated May 11, 1880, declining to pay me a fee; I have therefore withdrawn this petition from the files of this court and returned the same to J. H. Fisher, receiver, from whom I received it. (Signed) D. T. Corbin.")

Q. Mr. D. T. Corbin, of course, was the counsel in whose hands you put it?

A. Yes.

Q. Mr. Coghlan declined to pay him a fee.

A. I don't know anything about it. That is all I know about it, and that letter that I received from Mr. Coghlan afterwards—that is, purporting to come from Mr. Coghlan.

Q. Did Baring Bros. mention to you those receipts that you produced as signed by Mr. Coghlan or Martin?

A. They merely came with the accounts current.

Q. Did you ever see Martin & Co. write their name?

177 A. No.

Q. Are you acquainted with them?

A. No.

Q. Had no transactions with them except these?

A. None.

Q. Do you know of your own knowledge that Martin & Co. are agents of Coghlan?

A. No.

Q. Do you know that they are bankers?

A. I think I have a recollection of them as bankers.

Q. Did you produce the receipts purporting to be signed by Coghlan?

A. Yes.

By Mr. BACOT:

Q. This paper purports to be a petition of Henry T. Coghlan that you have testified as having received. Did you file it with the clerk here?

A. No.

Q. How did you get it back into your possession?

A. Maj. Corbin handed it to me.

Q. When did he hand it back to you?

A. I really cannot say.

Q. Do you recollect what year it was?

A. Is not the date on there? I think it was about that time. I got it back from him, as well as I recollect, about the date there.

Q. About May, 1880?

178 A. Yes. I cannot say positively. It was a matter that I was not interested in.

Q. He handed it back to you shortly after you handed it to him?

A. I don't recollect.

Q. It was about May, 1880?

A. I should think so.

Q. You testified that the clerk made a demand upon you for it again, and that you delivered it up to him. When did that occur?

A. I should think about two weeks ago; but really I have been so busy that I cannot swear positively when it was.

Q. About two weeks ago?

A. I should think so. I am not positive.

Q. Since you have been connected with the road as receiver has the State of South Carolina taken any action under its statutory mortgage to enforce the collection of this class of bonds—the Louisville, Cincinnati & Charleston R. R.?

(Objected to as not in reply to anything in the direct examination and irrelevant to the issue.)

A. Not to my knowledge.
Q. No summons?
A. No.

J. E. HAGOOD sworn.

Direct examination by Mr. MITCHELL:

Q. Will you produce the petition and rule to show cause,
179 in the case of Calvin Claflin *et al. vs.* The S. C. R. R. *et al.*, why the said petition of Calvin Claflin was not filed in court?

(Witness produces paper called for.)

By Mr. YOUNG:

Q. Is there on file in this court or has there ever been produced a power of attorney from Henry T. Coghlan to D. T. Corbin, Esq., to act as his attorney or solicitor?
A. No.

JNO. H. FISHER recalled.

By Mr. MITCHELL:

Q. Was that petition sent to you by Mr. Coghlan for the purpose of being filed in this cause?

(Objected to unless the letters are produced.)

A. My impression is it was by letter.
Q. You acted in accordance with that letter?
A. Yes.
Q. (Hands letters.) Will you be kind enough to examine all of these letters and state if those letters were received by you from Mr. Coghlan?
A. Yes; I think those are the letters I received.

(Said letters introduced by Mr. Mitchell and marked Exhibits —.)

(Objected to as irrelevant and not proven.)

By Mr. YOUNG:

Q. Did you ever have any correspondence with Martin & Co.?
A. No.
Q. No correspondence at all?
180 A. No.
Q. Those are the only letters you received from Mr. Coghlan?
A. I don't recollect. I think they are, though. I don't recollect any others.
Q. You know of none others?
A. I do not.
Q. If you have any others you will produce them at your leisure?
A. Yes.

Q. But those are the only letters purporting to be from Mr. Coghlan received by you?
A. Yes, I think those are all.

J. E. HAGOOD recalled for cross-examination.

By Mr. YOUNG:

Q. Have you any knowledge of Mr. Coghlan's signature?
A. No, I do not know his signature.
Q. Have you had any correspondence with him?
A. No.
Q. You know nothing about his signature?
A. I know nothing at all but the filing of the petition—that the petition was given to me by Maj. Corbin.
Q. And Maj. Corbin remanded?
A. In May afterwards he withdrew the petition, and I so marked on the file book: Withdrawn and delivered to him.
181 Q. You have no acquaintance with Mr. Coghlan's signature?
A. No.

By Mr. MITCHELL:

Q. Have you ever examined the signatures of any parties on petitions, bills, or papers filed in your office when they were handed to you to be filed by an attorney at the bar?
A. No.
Q. Has it ever been your habit to refuse to file a paper that was handed to you by a respectable attorney at the bar without your knowing the parties' signature to the petition?
A. No.

(Objected to as irrelevant and not in reply.)

D. T. CORBIN, Esq., sworn.

Direct examination by Mr. MITCHELL:

Q. Will you be kind enough to examine that petition marked Ex. A and state how you received it?
A. I received it from Mr. Fisher. When I received this petition from Mr. Fisher it was not exactly as it stands now. I have put in some head-notes in my handwriting—the title of the court and so on. In my handwriting are the words "United States of America" at the head of the petition, and just below the first line after that, "In the United — circuit court, Charleston," I have put in
182 the words "District of South Carolina, Fourth Circuit, in Equity." And then after following the sentence "The humble petition of Henry Thomas Coghlan, 14 Hyde Park," the words that follow are mine: "A citizen of the Kingdom of Great Britain." I filled in those words myself.
Q. What else did you add to that petition?
A. I signed my name to it, "D. T. Corbin, solicitor for petitioner."

Q. All the rest of that petition, then, was as it came to you?
A. Yes.
Q. What did you do with it?
A. I filed it in this court.
Q. Had you any correspondence with Mr. Coghlan?
A. I have quite a lengthy correspondence with him, a considerable correspondence. I don't know whether I should call it lengthy.
Q. Have you those letters now?
A. I think so.
Q. Will you be kind enough to produce them to-morrow?
A. I don't know whether I ought to produce them. They are letters, as I regard, between attorney and client, and I submit the question whether I ought to produce them and whether I can do so. I am very familiar with Mr. Coghlan's signature through the correspondence.
Q. They were in reply to letters?
183 A. Letters received from him, always in response to letters written to him. I think I wrote him first after receiving the petition, to which he replied, and I wrote him again. I think as many as three or four letters passed between us, and his final letter is noted on the back here, May 11th. I do not produce it in court, but it contains nothing but declining to pay me a fee, and I withdrew the petition.
Q. (Hands witness petition.) Will you examine that petition and tell me whether, from your knowledge of the signature of Mr. Coghlan through correspondence, that is the signature of H. T. Coghlan?
A. I have not the slightest doubt in the world that it is. It is the same signature that is attached to all his letters to me.

Cross-examination by Mr. YOUNG:

Q. You say you received that from Mr. Fisher?
A. Yes.
Q. Did you receive a direction or power from Mr. Coghlan directing you to file that petition? If so, I would be glad if you would produce it.
A. My memory is not as good as formerly, but my impression is that Mr. Fisher, when he handed it to me, handed me a letter from Mr. Coghlan asking him to hand it to some lawyer to attend to it, and Mr. Fisher asked me if I could attend to it. He either told me he had a letter from Mr. Coghlan asking him to hand it to
184 an attorney to attend to or he handed me a letter. Whether he told me or gave me the letter I don't know. I immediately took the petition and examined it, and I thereupon wrote to Mr. Coghlan. I think I have a copy of that letter in my copy book. I wrote to him about it, and I think I told him I had filed it, probably, or asked him whether I should file it. I am in doubt whether I filed it on the letter he had written to Mr. Fisher, and which was shown to me, or whether I took it from Mr. Fisher and then wrote Mr. Coghlan about it. Several letters passed in which he instructed me.

Q. I would rather you would produce those letters.

A. I think I have all the correspondence, but I did not know that they would be asked for this evening. If you desire it I will hunt up his letters and you, being his attorneys, do not object to their being produced I will produce them, but they are letters passing between attorney and client.

Q. I do not see the difference between testifying and producing them. If you are going to testify about them I would rather see the record.

A. I would only say that from the letters—correspondence—that I had with him I have not the slightest doubt about the signature of Mr. Coghlan.

By Mr. MITCHELL:

Q. Was that petition prepared by you?

185 A. Oh, no; it was sent already prepared and signed, excepting in the particulars I have mentioned.

By Mr. YOUNG:

Q. That is, handed to you by Mr. Fisher?

A. Yes.

Q. It did not come to you direct?

A. No; it came to me through Mr. Fisher, and I and Mr. Coghlan corresponded about that very petition.

(Cross-examination of Mr. Corbin reserved.)

J. H. WILSON sworn.

Direct examination by Mr. MITCHELL:

Q. What position did you hold in the South Carolina R. R. Co. prior to 1878?

A. I held the position of treasurer and secretary during 1878.

Q. Was it within your sphere of duties to attend to the financial matters of the road?

A. It was my business to do so from December, 1873, the time I went into the road.

Q. (Hands bonds to witness.) Will you examine these bonds and receipts and state how it is about the eight overdue coupons when the bond has but seven and what was done by the road in the exchange of those bonds?

A. That matter is very clear. The bond has but seven, but the last coupon matures on Jan. 1, 1866, and the renewal is on

186 July 1, 1866, so it carried six months' interest, equivalent to eight coupons.

Q. And that would make how many pounds?

A. That would make exactly 100 pounds on the £500 bonds and 50 pounds on the £250 bonds.

Q. What was done in reference to the exchange by the road of the bonds due in 1866?

A. They attempted to make an exchange of the bonds guaranteed

by the State, which in a great many cases was not carried out, and they issued a first-mortgage bond in 1868.

Q. The £500 bond was how exchanged?

A. In £600 bonds, and the £250 bonds for £300 bonds.

Q. Then there were £600 and £300 bonds sent to London to be exchanged for those bonds?

A. Yes; they were sent over to take up the old bonds.

Q. Those bonds were dated at what time?

A. July 2d, 1866, because the first day came on Sunday.

Q. Do you remember in what year those bonds were sent over.

A. No; that was before my time. I know they were sent over, but it was before I went to the road.

Q. Do you know under what act they were issued?

(Objected to.)

Q. What was the act under which they were issued?

187 A. I think it was an act passed at the session of the Legislature in December, 1865.

Q. When this bond says, "Paid on this bond £15, half-year dividend due July 1, 1868, as if it had been exchanged for new bond," what would have been the capital of the new bond?

A. £600.

Q. And of the £250 bond?

A. £300.

Q. Were those bonds of the Louisville, Cincinnati & Charleston R. R. Co. held in London maturing July 1, 1866? Was interest paid on them regularly by the road as if they were £600 and £300 bonds?

A. The interest was remitted regularly to Dent, Palmer & Co. I never got any receipts from them, and I complained at one of the meetings of the board that receipts were not sent me. We were always charged with it and the money was always remitted. The presumption is they were paid.

Q. Were those receipts entered upon those bonds by Dent, Palmer & Co. when they were presented for payment of interest?

A. That I do not know. I never got a receipt from them.

Q. Look on the bond.

188 A. I don't know anything at all about it but what they reported to me, that they were paid, and the presumption is that they were paid. I don't know whether that was the receipt of Dent, Palmer & Co. or anybody else. The money was always sent them, and they reported them as paid.

Q. The rate of interest on those bonds was put at what figure?

A. At 5 per cent. on the £600 and £300 bonds.

Q. Was it put on all the Louisville, Cincinnati & Charleston R. R. bonds at the same figure?

A. It was charged on all the bonds and reported to me, as treasurer, as the rate on all the bonds that had not been exchanged.

Q. Did any one make any complaint to the road of that rate of interest?

A. Not during the time I was there, from Dec., 1873, to Nov., 1878, when my services were dispensed with.

Q. You have been a banker at some period of your life?

A. I won't call it a banker. A banker is one who holds other people's money. I only bought foreign exchange.

Q. What is the legal rate of interest in England?

A. About two years ago, to my knowledge, it was 5 per cent. If any change has been — it has been made in the last two years.

Cross-examination by Mr. YOUNG:

Q. How do you know the legal rate in England to be 5 per cent.? Have you seen the laws?

189 A. I have never seen the law, but I have read it in the Bankers' Magazine and financial books. I know this much: that parties who left their accounts over there have been credited and charged at 5 per cent. interest.

Q. Do you not know that interest in England varies according to contract—three, four, and five per cent.?

A. I know that interest varies according to contract, as it does in this State.

Q. No; I mean there is a law for interest at three per cent., four and five per cent.

A. I do not know. I don't know of any law for interest at two, three, or four per cent.

Q. You do not know that in many cases the legal rate of interest is sometimes three per cent., sometimes four, and sometimes 5 per cent.?

Q. To my knowledge the legal rate of interest is not two, three, or four per cent. The Bank of England's or the customary rate may be that, but the legal rate of interest is 5 per cent. I have not seen the law, but I have read of it and seen accounts that have been rendered.

By Mr. BACOT:

Q. Were Dent, Palmer & Co. the regular agents of the South Carolina R. R. Co. in England?

A. Had been from its inception.

(Objected to as not in reply.)

Q. Up to what time?

190 A. Up to the time that I left the road, which was Nov. 1, 1878, they were the agents and always paid interest.

Q. Did the State of South Carolina ever take any action to enforce the payment of these Louisville, Cincinnati & Charleston R. R. bonds?

(Objected to as irrelevant and not in reply.)

A. Not at all during the time I was in that office.

Q. Do you know otherwise of anything being done?

A. I have never heard of it.

By Mr. MITCHELL:

Q. In your transactions with parties dealing in foreign exchange, in the absence of any contract in reference to the rate of interest, the rate was 5 per cent?

A. I never had any contracts dealing in foreign exchange that had anything to do with interest. My contracts were simply for the purchase of bills for parties in New York whom I represented.

F. M. BURDELL sworn.

Direct examination by Mr. MITCHELL:

Q. What position did you occupy in the South Carolina R. R.; from what time and up to what date?

A. Up to the last of October, 1878, I was general book-keeper of the company.

Q. Did this matter of the exchange of bonds come within your knowledge?

A. Yes.

191 Q. Will you be kind enough to state how it is that those receipts call for eight overdue coupons when the bond has but seven coupons on it?

A. There are seven coupons on the bond, and the eighth coupon is represented by the last six months' interest.

Q. When the attempt was made to exchange by the substitution of new bonds for the old bonds was the interest upon those bonds of Louisville, Cincinnati & Charleston R. R. capitalized?

A. Yes; the £500 bonds became £600 bonds, and the £250 bonds became £300 bonds.

Q. Do you remember at what time they were sent over to exchange?

A. That was before I went to the road.

Q. Will you explain this: Paid on this bond £15, &c. What ought that new bond to have been?

A. That was upon the new capital of £600, capitalizing those so-called eight coupons.

Q. Then to the parties who would exchange Louisville, Cincinnati & Charleston R. R. bonds that matured in 1866 new bonds for £600 were given, drawing 5 per cent. interest?

A. Yes, and had been given to a great many.

Q. Those to whom it had not been given keeping the old bond with that endorsement?

A. Yes.

Q. As if the interest had been capitalized and the new bond given for that amount?

192 A. Yes.

Q. Have you ever heard of any objection by any parties who held Louisville, Cincinnati & Charleston R. R. bonds, and also Mr. Coghlan, the holder of these bonds, since you have been with the road as to the payment of five per cent. interest upon those bonds from the time of their maturity?

A. Not until Mr. Fisher became receiver. I think Mr. Coghlan

objected. He wanted the principal of his bonds paid, claiming, I think, that the bonds drew 5 per cent., and the past-due security he claimed at a higher rate of interest. That was the first time I ever heard the question made and the only time. He claimed 7 per cent. for the past-due security.

Q. How did that claim appear—by letter?

A. I think so.

Q. Did you see the letter?

A. I think Mr. Fisher showed it to me. He was mistaken, and I think he was convinced he was mistaken.

(Counsel for complainant objects to witness stating an opinion, and also to his stating the contents of a letter not produced.)

Cross-examination by Mr. BACOT:

Q. When did you go into the road?

A. In the latter part of 1868, I think.

Q. Were Dent, Palmer & Co. the agents of the road in England?

A. Yes.

193 (Objected to as not in reply.)

Q. Were they the only agents of the road?

A. That I knew.

Q. Do you know anything of your own knowledge about Mr. Coglan's course in the matter of the bonds?

A. No.

Q. What is your present connection with the road?

A. I am not connected with it. My connection with the road commenced in 1868. I did not become book-keeper until the latter part of 1869.

Q. What position did you occupy before 1869, when you became book-keeper?

A. A general clerk.

Q. From 1869 up to the time you left the road what was your position?

A. General book-keeper up to the time Mr. Fisher became receiver.

Q. Have you been connected with the road since he was receiver?

A. Yes.

Q. During the time you were connected with the road while he was receiver what position did you occupy?

A. I was retained; I don't know what for specifically, but my understanding was to go on as general book-keeper.

Q. And did you remain general book-keeper?

A. No; the books were not opened at the time I left. The
194 old debt came to a standstill and the books were not opened.

Q. What was your position then?

A. To do whatever I was called upon to do. I gave all my time.

(Objected to as not in reply.)

Q. Did you ever know or hear of the State of South Carolina

taking any steps to enforce the payment of these Louisville, Cincinnati & Charleston R. R. bonds?

A. No.

(Objected to on same ground.)

Deposition of Henry Thomas Coglan was then opened and read.

In the reading of said deposition defendants' counsel objected to the paper put in evidence as produced upon the ground that the signature of the party thereto has not been proved. Mr. Mitchell also objected to the following exhibits:

Exhibit C 1.
Exhibit C 2.
Exhibit C 3.
Exhibit C 4, signature not being proved.
Exhibit C 5.
Exhibit C 6, as a copy of a letter.
Exhibit C 7.
Exhibit C 8.
Exhibit C 9; signature not proven.

195 Exhibit C 10, as a copy, and no reason shown why the original has not been presented.

Exhibit C 11; signature not proven.

Exhibit C 12, as a copy without the loss of the original having been accounted for.

Exhibit C 13; signature not proven.

Exhibit C 14; signature not proven.

Mr. Mitchell also objected to the following:

"I have been informed by the said Messrs. Martin that they have destroyed the original of said copies in accordance with the practice of their business to destroy all correspondence after it has been in their hands for ten years."

Mr. Mitchell also objected to the following phrase in the answer of Richard Biddulph Martin:

"My said firm received on behalf of plaintiff a circular letter, dated March 22, 1869, signed by Dent, Palmer & Co."

Mr. Mitchell objected also to answer to the eighth interrogatory by Richard Biddulph Martin.

196 UNITED STATES OF AMERICA:

In the United States Circuit Court in Charleston, District of South Carolina, Fourth Circuit. In Equity.

To the honorable the judges of said court:

The humble petition of Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, esquire, a citizen of the King of Great Britain, sheweth as follows:

That your petitioner is the owner of six bonds of five hundred pounds each of the United States of America, State of South Caroline, five per cent. loan, Louisville, Cincinnati, and Charleston rail-

road, now called the South Carolina Railroad Company, respectively dated the 31st day of December, 1838, and numbered, respectively, 18, 19, 20, 21, 22, and 23; and he is also the owner of twelve similar bonds of two hundred and fifty pounds each, dated, respectively, the 31st day of December, 1838, and numbered 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37, amounting in the whole to the value of six thousand pounds, payment and redemption guaranteed the 1st day of January, 1866. These bonds were issued under "An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati, and Charleston Railroad
197 Company, and for other purposes," and are endorsed: "The conditions of the above act having been faithfully complied with, I do hereby, for and on behalf of the State of South Carolina, endorse her guarantee on this bond for the payment and redemption of the principal and interest of the same.—Wm. Ed. Hayne, comptroller."

That from January 1st, 1863, to January 1st, 1866, the last seven coupon- were not paid.

That from July 1st, 1866, to January 1st, 1868, four half-year's interest was not paid.

That in the year 1868 the South Carolina Railway Company sent a special agent to this country to propose a fresh arrangement of the debt, viz., to substitute other bonds of the company for the bonds which had the endorsement of the State of South Carolina, and in their circular state that the effect of the exchange would be to relinquish the guarantee of the State of South Carolina for the principal and interest of the bonds.

That the railroad company has never made any offer to pay off these overdue bonds or arrears.

That your petitioner declined to surrender his bonds and so relinquish the guarantee of the said State; and the railroad company has since, from time to time, paid the interest due on these
198 bonds from July 1st, 1868, to July 1st, 1879, but the seven coupons and the four half year's interest above named still remain unpaid, and, together with that of January 1st, 1880, amount to one thousand nine hundred and fifty pounds.

That your petitioner is desirous of receiving the principal and other monies secured by the said bonds and coupons and the arrears with such compensation in interest as your honorable court may consider he is entitled to.

Your petitioner therefore humbly prays that an order may be made to that effect.

H. T. COGHLAN.

Be it known that on the tenth day of January, one thousand eight hundred and eighty, before me, James William Comerford, of the city of London, notary public by royal authority, duly admitted and sworn, personally appeared Henry Thomas Coghlan, known to me to be the petitioner named in the foregoing petition, who thereupon signed the said petition in my presence and acknowledged his signature at the foot thereof to me, notary.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, in London, the day and year aforesaid. *Veritas.*

[SEAL.] JAMES W. COMERFORD, *Not. Pub.*

199 D. T. CORBIN,
Solicitor for Petitioner.

Consulate general of the United States of America for Great Britain & Ireland, at London.

I, Joshua Nunn, vice and deputy consul general and notary public *ex officio* of the United States of America at London, England, do hereby make known and certify to all whom it may concern that James William Comerford, who hath signed the annexed certificate, is a notary public duly admitted and sworn and practising in the city of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at London aforesaid, this tenth day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] J. NUNN.

200 Endorsements on petition:

EXHIBIT A.

NOTE.—The petitioner, H. T. Coghlan, by a letter to me dated May 11, 1880, declined to pay me a fee for attending to this case, and I have therefore withdrawn this petition from the files of the court and return same to J. H. Fisher, receiver, from whom I received it.

D. T. CORBIN.

May 28, '80.

Filed 18 M'ch, 1880.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

201 EXHIBIT B. In Evidence before me May 9, 1882. J. E. Hagood, Special Master.

14 HYDE PARK GARDENS, LONDON, *June 15th*, '80.

DEAR SIR: Having received a letter from Mr. Corbin, in which he said, I shall have to require you to send me a fee of $500, — not understanding such a demand, I wrote to him as follows, viz: "As I am unable to agree to this, the business between us is at an end, and I will make other arrangements."

I have since had a letter from that gentleman saying he will take an order withdrawing the petition, and will return the petition to you.

I should be much obliged if you will let me know if he has done

so (as he had no instructions from me to withdraw the petition) and if it is now in your possession.

I remain, dear sir, yours very truly,

H. COGHLAN.

Mr. John Fisher, receiver, South Carolina Railroad Company, Charleston, South Carolina, United States.

202 EXHIBIT C 1. In Evidence before me. J. E. Hagood.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *July 2nd*, 1879.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, one hundred and eighty pounds sterling, being interest due July 1st, 1878, and January 1st, 1879, on bonds of the Louisville, Cincinnati and Charleston Railroad Company of £250 each, with eight overdue coupons attached, representing three hundred pounds sterling, and numbered respectively as follows:

(26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.)

(Signed in duplicate) J. MARTIN.

203 EXHIBIT C 1.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *July* 2, 1879.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, one hundred and eighty pounds sterling, being interest due July 1st, 1878, and January 1st, 1879, on bonds of the Louisville, Cincinnati and Charleston Railroad Company of £500 each, with eight overdue coupons attached, representing six hundred pounds sterling, and numbered respectively as follows:

(18, 19, 20, 21, 22, 23.)

(Signed in duplicate) MARTIN & CO.

204 EXHIBIT C 2.

Form 2.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *February* 4, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due July 1st, 1879, on bonds of the Louisville, Cincinnati & Charleston Railroad Company of £250 each, with eight overdue coupons attached, representing three hundred pounds sterling, and numbered respectively as follows:
(26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.)

(Signed in duplicate) H. T. COGHLAN.

4th. Feb., '80.

205 EXHIBIT C 2. In Evidence before me.

Form 1.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *February* 4, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due July 1st, 1879, on bonds of the Louisville, Cincinnati & Charleston Railroad Company of £500 each, with eight overdue coupons attached, representing six hundred pounds sterling, and numbered respectively as follows:
18, 19, 20, 21, 22, 23.

(Signed in duplicate) H. T. COGHLAN.

4 Feb., '80.

206 EXHIBIT C 3.

Form 2.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *June 8th*, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due January 1, 1880, on bonds of the Louisville, Cincinnati & Charleston Railroad Company of £250 each, with eight overdue coupons attached, representing three hundred pounds sterling, and numbered respectively as follows:

12. Nos. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.

(Signed in duplicate) J. MARTIN.

207 EXHIBIT C 3.

Form 1.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, *June 8th*, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due January 1, 1880, on bonds of the Louisville, Cincinnati and Charleston Railroad Company of £500, each with eight overdue coupons attached, representing six hundred pounds sterling and numbered respectively as follows:

6. Nos. 18, 19, 20, 21, 22, 23.

(Signed in duplicate) J. MARTIN.

208 EXHIBIT C 4.

Form 1.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, 3 *August*, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety

pounds sterling, being interest due 1st July, 1880, on bonds of the Louisville, Cincinnati & Charleston Railroad Company of £500, each with eight overdue coupons attached, representing six hundred pounds sterling and numbered respectively as follows:

18 to 23, both inclusive.

(Signed in duplicate) J. MARTIN.

209 EXHIBIT C 4.

Form 2.

In the Circuit Court of the United States, District of South Carolina.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

LONDON, ENGLAND, 3 *August*, 1880.

Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due 1st July, 1880, on bonds of the Louisville, Cincinnati & Charleston Railroad Company of £250, each with eight overdue coupons attached, representing three hundred pounds sterling and numbered respectively as follows:

26 to 37, both inclusive.

(Signed in duplicate) MARTIN & CO.

210 EXHIBIT 1.

14 HYDE PARK GARDENS, LONDON, 13*th Sept.*, '79.

SIR: I wish to draw your attention to my coupons of January 1st, 1863, to January 1st, 1866, and my overdue bonds January 1st, 1866, which have remained so long and still remain unpaid, and which have or ought to have a priority to any funds thereon. I will thank you if I am in error in addressing myself to you, to bring my claim to the knowledge of the court or State, whomever the proper parties that I should apply to.

The following is a copy of the State's guarantee on one of my bonds, viz:

"The conditions of the above act having been faithfully complied with, I do hereby, for and in behalf of the State of South Carolina, endorse her guarantee on this bond for the payment and redemption of the principal and interest of the same."—Wm. Ed. Hayne, comptroller.

I am, sir, your obedient servant, H. COGHLAN.

Mr. John H. Fisher, receiver South Carolina Railroad Company, United States, Charleston.

211 EXHIBIT 2.

14 HYDE PARK GARDENS, LONDON, *Dec. 26th*, '79.

SIR: I have to thank you for your letter of the 3d inst., which I received on the 23rd.

With regard to the petition I am afraid there will be some delay unless you can furnish me with a copy of the proper form, the expense of which & your letters, &c., I shall be happy to pay (on your letting me know the amount) to any one you may name in London.

I am told the petition must be drawn out by an American lawyer acquainted with the law of South Carolina and the law of the United States, but I don't know any such in London to apply to.

I have written to the secretary of your legation here, but I have not yet received his answer. Pray, what is the full name of the court that I have to address the petition to?

I am sure, under the circumstances, you will excuse my request, and remain, sir, your obedient servant,

H. COGHLAN.

Mr. John H. Fisher, receiver South Carolina Railroad Company, United States, Charleston.

212 EXHIBIT 3.

14 HYDE PARK GARDENS, LONDON, *Dec. 29th*, '79.

SIR: I should be obliged if you will let me know if the petition should be sent by post to yourself and by what date and whether it is requisite to send out the bonds with it or if it will be sufficient to deliver them to Messrs. Baring when they receive your order for the payment of them and the arrears.

I am sorry to trouble you with another letter, but I forgot to make this enquiry when I wrote to you on the 26th inst.

I remain, sir, your obedient servant,

H. COGHLAN.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, United States.

213 EXHIBIT 4.

14 HYDE PARK GARDENS, LONDON, *Jan.* 10, '80.

SIR: In order to save time I have had the enclosed petition drawn out, which I trust is in proper form in all respects. If not and it won't do will you kindly telegraph to that effect, and let me know the alterations necessary and I will have a fresh one drawn out in accordance with your instructions.

Hoping, however, that this may not be necessary and that the court will excuse any inadvertence on my part, which is quite unintentional, I remain, sir, your obedient servant,

H. COGHLAN.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, South Carolina, United States.

214 EXHIBIT 5.

14 HYDE PARK GARDENS, LONDON, *Nov. 13th*, '79.

SIR: Not having received any reply or acknowledgement to a letter I addressed you on the 13th Sept. last, I should be obliged by your letting me know if you have received it; and, if so, when I may expect an answer.

I remain, sir, your obedient servant,

H. COGHLAN.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, United States.

215 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

CALVIN CLAFLIN *et al.*, Complainants,
vs.
THE SOUTH CAROLINA R. R. COMPANY *et al.*, Defendants. } In Equity.

To the honorable the judges of said court:

The petition of Calvin Claflin *et al.*, complainants herein, respectfully shows unto the court—

That by the file book of this court and in this cause there appears to have been filed on the 18th day of March, A. D. 1880, a certain petition by and on behalf of Henry T. Coghlan, Esquire, of London; that complainants, by their solicitors, have examined the records and made due search for said petition, but have failed to find the same on record.

They therefore pray for a rule against J. E. Hagood, Esquire, clerk of this court, to make him produce said petition or to show cause why the same is not now on file with the record in his office.

MITCHELL & SMITH.

216 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

CALVIN CLAFLIN *et al.*, Complainants,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants. } In Equity.

Upon reading and filing the petition of Calvin Claflin *et al.*, complainants herein, and on motion of Messrs. Mitchell & Smith, complainants' solicitors, it is ordered—

That the clerk of this court do produce said petition of Henry Thomas Coghlan, of London, England, or do show cause before this

court on the 28th day of April next, at 11 o'clock a. m., why said petition is not on file with the records of this cause in his office.

April 27th, 1882.

HUGH L. BOND, *C't Judge.*

Filed 27th Ap'l, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

217 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

CALVIN CLAFLIN *et al.*
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.* } In Equity.

Return of J. E. Hagood, Clerk, to Rule to Show Cause.

Now comes J. E. Hagood, clerk of this court, and in return to the rule issued against him by this honorable court to produce a certain petition of H. T. Coghlan, filed on the 18th March, 1880, in this case, or to show cause why the same cannot be produced, for answer thereto says—

That the said petition was filed by D. T. Corbin, solicitor for the said H. T. Coghlan, and was withdrawn by him on the 11th May, 1880, for reasons set forth on back of said petition.

He has made search for said petition and found the same in the hands of John H. Fisher, receiver, and demanded the same from him on the ground that the petition was withdrawn from the files of the court without any order of the court permitting the
218 withdrawal, and he now produces the said petition in accordance with the requirements of the rule.

April 28th, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

On hearing the return of J. E. Hagood to the rule issued against him for the production of the petition of H. T. Coghlan filed in this cause, and the same having been produced—

It is ordered that the said petition be replaced on the files of this court and the rule be dismissed.

Ap'l 28, 1882.

HUGH L. BOND, *C't Judge.*

Filed 28 April, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

219 UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

HENRY T. COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY and Others.

On motion of D. T. Corbin and Mitchell and Smith—

It is hereby ordered that the commission which has been issued in this cause to take the testimony of the complainant and returned to this court be published in the office of the clerk of this court, and that the time for taking testimony in this cause be enlarged for ten days.

May 9, 1882.

HUGH L. BOND, *C't Judge.*

Filed 9 May, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

220 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

Order Allowing Plaintiff to Put in Testimony in Reply, &c.

On motion of T. W. Bacot, plaintiff's attorney, it is ordered that the plaintiff have sixty days from the expiration of the time allowed to the defendants to put in testimony, to wit, from the 19th May, instant, in which to put in testimony in reply, and such testimony must be taken by commission where witnesses out of the jurisdiction of this court are examined.

It is further ordered that at the close of the time herein allowed the parties, upon ten days' notice of one to the other, consent to submit the matter to the court at Baltimore.

11 May, 1882.

HUGH L. BOND, *C't Judge.*

Filed 11 May, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

221 In the U. S. Circuit Court for the District of South Carolina, 4th Circuit.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants. } In Equity.

It is hereby agreed that the time allowed to the plaintiff to put in testimony, &c., by the order made in above on the 11th day of May last, which will expire on the 18th inst., be extended only so far as relates to taking testimony of plaintiff himself up to the 1st day of September next, and that the commission be opened and published as soon as returned.

It is also agreed that the cause be not brought to a hearing in Baltimore by either the plaintiff or the defendants before the month of October next, and then only at the convenience of both sides; if not heard in Baltimore in October next, that it stand for trial at the next regular term of the court.

Charleston, S. C., 11th July, 1882.

T. W. BACOT.
MITCHELL & SMITH.

Filed July 11th, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

222 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD CO. *et al.*, Defendants.

CHARLESTON, S. C., *July 18th*, 1882.

A reference was held in this cause this day.

Present: T. W. Bacot and H. E. Young, representing complainant, and Messrs. Mitchell & Smith, representing defendants.

Mr. Bacot put in evidence warrant of attorney from complainant to himself.

Objected to upon the ground it is irrelevant and not in reply.

Direct examination:

DAVID ROBERTS being sworn, says:

I do not know the plaintiff personally, only by correspondence. I am acting as Mr. Coghlan's agent here and am holding his bonds. I received from him in June, 1880, an order on Mr. Fisher for the delivery of a petition to me.

223 (Order put in evidence and marked Exhibit "B.")

I never acted on that order, because I thought it was in your hands, and that you had taken the proper steps. I never sent to you the order or communicated it to you.

Cross-examination by Mr. MITCHELL:

I have the bonds of Mr. Coghlan in my possession; received them after the receipt of the order alluded to above. I did not notify Mr. Fisher that I had the bonds, nor did I make any demand for the payment of them.

Redirect examination by Mr. BACOT:

I received the bonds from complainant on 6th Nov., 1880.

Complainant proves that there was no proceeding taken by the State to protect the State guaranteed bondholders of the class of complainants.

Complainant closed, except as to the commission.
Reference closed.

J. E. HAGOOD, JR.,
D'p'ty C. C. C. U. S., Dist. S. C.

In the absence of J. E. Hagood, special master, the foregoing testimony was taken by me with the consent of all the counsel.

J. E. HAGOOD,
D'p'ty C. C. C. U. S., Dist. S. C.

Filed 18th July, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

224 EXHIBIT A.

Whereas I, Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, esquire, am the holder and *bona fide* owner of certain bonds of "the Louisville, Cincinnati and Charleston Railroad Company," a body politic and corporate of the State of South Carolina, United States of America (now known as "the South Carolina Railroad Company"), to wit, bonds Nos. 18, 19, 20, 21, 22, and 23, each conditioned for five hundred pounds (£500) sterling, and Nos. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37, each conditioned for two hundred and fifty pounds (£250) sterling, guaranteed by the said State of South Carolina, dated December 31, 1838, and redeemable January 1, 1866:

Know all men by these presents that I, the said Henry Thomas Coghlan, do hereby authorize, order, appoint, and empower Thomas Wright Bacot, of the city of Charleston, in the said State of South Carolina, lawyer, to be my attorney, agent, and lawful solicitor, and for me and in my name and on my behalf to exhibit or prosecute one or more bill or bills or to commence and prosecute any action or actions, suit or suits, in law or equity or otherwise, as he may be advised, against the said "The South Carolina Railroad Company" and against all and any other party or parties whomsoever, in such court or courts

as he shall be advised, for the recovery of the amount of principal and interest due and owing on the bonds held by me as aforesaid, and generally to do, limit, and appoint all other acts and things which he, my said attorney, may deem convenient and necessary in the premises, with power also, as attorney or attorneys under him, one or more, for that purpose to make and substitute, and to do all lawful acts for effecting the premises.

For the doing of which this shall be a sufficient warrant to the said Thomas Wright Bacot.

As witness my hand and seal this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and eighty.

HENRY THOMAS COGHLAN. [SEAL.]

Sealed and delivered in presence of—

CHARLES WILLIAM STEVENS,
19 *Queen Victoria Street, London, Solicitor.*

MONTAGUE JAMES NANCE,
Same Place, Clerk to Mr. Charles W. Stevens.

Be it known that on the sixteenth day of September, in the year of our Lord one thousand eight hundred and eighty, before me, Joshua Nunn, vice and deputy consul general of the United States of America, at London, came Henry Thomas Coghlan, above named, and acknowledged the foregoing warrant of attorney to be his act and deed.

In testimony whereof I have hereunto set my hand and affixed official seal, at London, England, the day and year last above mentioned.

J. NUNN,
[SEAL.] *Vice & Deputy Consul General U. S. A., London.*

EXHIBIT B.

14 HYDE PARK GARDENS, LONDON, *June 22nd*, '80.

DEAR SIR: I should be obliged by your delivering to Mr. David Roberts, of your city, my petition.

I remain, dear sir, yours truly, H. COGHLAN.

John H. Fisher, Esq., receiver South Carolina Railroad Company, Charleston, South Carolina.

228 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
against
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

To Messrs. D. T. Corbin, Henry E. Young, Brawley & Barnwell, T. M. Hanckel, B. H. Rutledge, A. T. Smythe, Buist & Buist, Lord & Inglesby, and Rutledge & Young:

Take notice that the undersigned will apply to J. E. Hagood, Esquire, clerk of the court aforesaid, on Monday, the 3d day of July, 1882, at 10 o'clock in the forenoon, to issue a commission to examine on the accompanying interrogatories Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, esquire (the plaintiff above named), as a witness for and on behalf of himself in the above-entitled cause.

The plaintiff names as commissioners—

1. Stephen Cracknall, of 3 New Square, Lincoln's Inn, London, England, esquire, barrister.

2. Richard Ouseley Blake Lane, of 3 Tanfield Court, Temple, London, England, esquire, barrister.

229 Also take notice that you will be required to produce on the trial of this cause the original letters written by the plaintiff to D. T. Corbin, Esquire, in the year 1880, referred to in the accompanying interrogatories, otherwise copies of such letters will be used in evidence.

June 22nd, 1882.

T. W. BACOT,
Pl'ff's Att'y.

We acknowledge service of a copy of the within notice and accompanying interrogatories this 22d day of June, 1882.

MITCHELL & SMITH.
BUIST & BUIST.
BRAWLEY & BARNWELL.
A. T. SMYTHE.
B. H. RUTLEDGE.
RUTLEDGE & YOUNG.
H. E. YOUNG.
THOS. M. HANCKEL.
LORD & INGLESBY.

Filed 22 June, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

230 UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

Interrogatories to be propounded to HENRY THOMAS COGHLAN, of 14 Hyde Park Gardens, London, England, esquire, the plaintiff above named, as a witness for and on behalf of himself in the above-entitled cause, to wit:

1. State all you know about a petition which was filed in the aforesaid court by D. T. Corbin, solicitor, on your behalf on the 18th day of March, 1880, in respect to the bonds of the Louisville, Cincinnati & Charleston Railroad Company, owned by you and the subject of the present suit.

2. When did you first know of your right to interest at the rate of 7% (seven per cent.) per annum on such bonds and their unpaid coupons, and from whom did you first learn such right?

3. On the subject of your said bonds—

231 *a.* Did or did not you receive a letter from John H. Fisher, receiver, dated Dec. 3, 1879? If so, annex such letter hereto.

b. Did or did not you receive a letter from John H. Fisher, receiver, dated Jan'y 26th, 1880? If so, annex such letter hereto.

c. Did or did not you receive a letter from D. T. Corbin dated March 12th, 1880, and did you reply to the same? If so, annex such letter hereto, and also a copy of your reply to the same.

d. Did or did not you receive a letter from D. T. Corbin dated April 14th, 1880, and did you reply to the same? If so, annex such letter hereto, and also a copy of your reply to the same.

e. Did or did not you receive a letter from D. T. Corbin dated May 24th, 1880? If so, annex such letter hereto and state what action you then took.

f. Did you receive a letter from John H. Fisher, receiver, dated July 6th, 1880? If so, annex such letter hereto.

4. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. W. BACOT,
Pl'ff's Att'y.

Filed 22 June, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

232 THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY and Others.

To T. W. Bacot, Esqr., plaintiff's attorney:

Take notice that the defendant James E. Hagood, ordered by this court to assume and take charge of all suits pending by or against the receiver, John H. Fisher, names as commissioner Joshua Nunn, Montague House, 63 Bartholomew road, Camden road, London, N. W.

MITCHELL & SMITH,
Sol'rs for Defendant.

Cross-interrogatories to be propounded to Henry Thomas Coghlan, of 14 Hyde Park Gardens, London, England, Esq., produced as a witness for and on behalf of himself in the above-entitled cause.

I. The said defendant excepts to the first direct interrogatory and the answer thereto, so far as the interrogatory involves anything in reference to the contents of the petition or seeks to explain,
233 vary, contribute, or modify what is stated in said petition. Subject to this exception, the following cross-interrogatories are propounded:

If you say the said petition was drafted by yourself or under your supervision and direction, or if you say anything about said petition whatever, please state who drafted the complaint in this cause under which this commission issues.

Did you read this complaint or a copy thereof or were you informed of its contents before you gave your testimony-in-chief?

Do you know whether Richard Biddulph Martin, Esqr., read the said complaint or a copy thereof or was informed of its contents before he gave the testimony taken under a previous commission issued in this cause?

II. Defendant objects to the second interrogatory on the ground that it involves a question of law, one of the chief issues in this cause to be decided by this court. Subject to this exception, the following cross-interrogatories are propounded:

What is the legal rate of interest allowed in Great Britain on contracts for the loan or use of money? In case no rate of interest is expressed in a contract for the loan or use of money, what rate does the law affix thereto? If in an acknowledgement of indebt-
234 edness, such as a bond or other instrument, a rate of interest be expressed to the maturity of the bond and no rate be fixed by the bond or other instrument after maturity, what is the rate fixed by law after maturity?

III. Will you produce and annex hereto your original letter or a copy thereof, dated 24th of March, 1869, addressed to Messrs. Martin

& Co., which is alluded to in the letter of Martin and Company to you, dated 29th of March, 1869, and attached to your previous testimony in this cause?

IV. When did you or your agents demand payment of the bonds and interest thereon set forth in your complaint in this cause from the South Carolina Railroad Company after the protest which is claimed to have been made on your behalf in April, 1867? If you did, state the time and on whom the demand was made, and, if by letter, annex a copy thereof to this commission.

V. Did you ever demand interest at the rate of seven per cent. from the railroad company or its agent on your past-due bonds, stated in the complaint, and on arrearages of interest at that rate? If yea, state on whom, by whom, and when the demand was made, and if by letter annex a copy of said letter hereto; if not by letter and the demand was not made by yourself, state whether you
235 know of your own knowledge and not from what you have heard from others whether such demand was ever made.

VI. You have been asked by your present attorney to produce and annex certain letters of your former attorney, D. T. Corbin, and of John H. Fisher. If you produce and annex any letters of the said persons please produce and annex hereto copies of all your letters to D. T. Corbin and J. H. Fisher and of their letters to you which you have not already produced.

MITCHELL & SMITH,
Sol'rs for Defendant.

Service of the within notice and cross-interrogatories acknowledged this 3d July, 1882.

T. W. BACOT,
Pl'ff's Att'y.

Filed July 3d, 1882.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

236 THE UNITED STATES OF AMERICA, }
South Carolina District. }

The President of the United States of America to Stephen Cracknall, of 3 New Square, Lincoln's Inn, London, England, Esquire, barrister; Richard Ouseley Blake Lane, of 3 Tanfield Court, Temple, London, England, Esquire, barrister, and Joshua Nunn, Montague House, 63 Bartholomew Road, Camden Road, London N. W., Greeting:

Whereas a certain cause is now depending in the circuit court of the United States for the fourth circuit in the district of South Carolina, wherein Henry Thomas Coghlan is the plaintiff and The South Carolina Railroad Company and others are defendants; and it being necessary to the investigation of the said cause that certain persons resident in London, England, should be examined on certain interrogatories: Now, know ye that, in confidence of your prudence, ability, and

integrity, you are appointed and by these presents full power and authority are given to you or any two or more of you to examine all witnesses whatsoever, as well on the part of the said plaintiff as on the part of the said defendants or either of them, upon interrogatories; and therefore you or any two or more of you are
237 hereby authorized and required, on certain days and at certain places to be appointed by you for that purpose, to cause such witnesses to come before you and then and there to examine each of them apart on the said interrogatories on their respective corporal oaths first taken before you or any two or more of you, and to reduce their depositions to writing, and return this writ to the clerk of the said court, at Charleston, in the State of South Carolina, under your seals, with the said interrogatories and depositions annexed; and you and every of you are hereby further required that before you proceed to swear and examine any witness you severally take the oath first specified in the schedule hereunto annexed, and any one of you is hereby authorized and empowered to administer such oath to the other or others of you; and you are hereby further authorized and required, jointly or separately, to administer the oath last specified in the said schedule hereunto annexed to any clerk employed in taking the deposition of witnesses aforesaid before such clerk is permitted to act or be present at such examination.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States of America, at Charleston, in South Carolina,
238 district aforesaid, the third day of July, in the year of our Lord one thousand eight hundred and eighty-two, and in the one hundred and sixth year of the sovereignty and Independence of the United States of America.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

Commissioner's Oath.

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties to this cause, take the examination and deposition of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you, and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed and sworn to secresy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the circuit court of the
239 United States, so help you God.

R. O. B. LANE.
J. NUNN.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed as far forth as you are directed and employed by the said commissioners or any of them to take and write down and engross the said depositions or any of them, and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken or written down, transcribed or engrossed, by you, or whereto you shall have recourse or be anyways privy, until publication shall pass by rule or order of the circuit court of the United States, so help you God.

HERBERT C. GOFF.

240 The execution of this commission appears in certain schedules hereunto annexed.

R. O. B. LANE,
J. NUNN,
Commissioners.

Instructions for the Commissioners.

The commissioners are requested, in the first place, to observe carefully the directions contained in the body of the commission. Any two of them will be sufficient to take the examination. Notice is to be given to the commissioners on the other side of the time and place of examination, and if they do not attend the examination may proceed in their absence.

When the examination of the witness is completed his depositions are to be signed by him and attested by the commissioners.

When the examination of all the witnesses is closed the interrogatories and depositions are to be annexed to the commission and the whole enclosed in a large paper under seal. The commissioners will endorse on one corner of the outside of it the name of the cause and seal the packet with their seals and write their names across the seals and direct it to the clerk or register by whom the commission is signed.

241 If the commission is return- by post, one of the commissioners will sign a memorandum on the outside to certify that the enclosed was lodged by him in the post office.

242 LONDON, ENGLAND.

Deposition of a witness taken & subscribed before us, Richard Ouseley Blake Lane & Joshua Nunn, commissioners, duly commissioned as such, on the 18th day of August, 1882, between the hours of eleven o'clock a. m. and three o'clock p. m. of the said day, at No. 3 Tanfield Court, Temple, London, England, in the Empire of Great Britain, in pursuance of a commission hereto annexed & to be read as evidence in a certain case now depending in the circuit court of the United States for the fourth circuit, in the district of South Carolina, wherein H. T. Coghlan is pl'ff & The South Carolina Railroad & others are defendants.

On the part of the plaintiff, HENRY THOMAS COGHLAN, a witness of lawful age, being first by us duly sworn to testify the truth, the whole truth, & nothing but the truth in regard to the matter in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

243 1. To the first interrogatory I say that the petition was drawn up & sent out by the advice of Mr. Fisher, the receiver, ignorant of what my rights were. I assisted to prepare the petition with Mr. C. W. Stevens, an English solicitor, both of us being entirely unacquainted with the laws of South Carolina. It was forwarded to Mr. Fisher 10th of January, 1880, & it was filed before I learnt from Mr. Corbin my right to seven per cent. interest. The said petition was suggested to me by Mr. Fisher in a letter written by him to me 3d of December, 1879. That letter is the annexed hereto, marked number one. In the month of May, 1880, Mr. Corbin withdrew the petition from the files of the court & returned it to Mr. Fisher. I have since learned that the petition has been replaced upon the files of the court, but this has been done without any authority from me by Mr. Corbin, who had then ceased to be my attorney.

2. To the second interrogatory I say that I first knew of my right to seven per cent. interest on the said bonds & coupons when I received Mr. Corbin's letter of 12th March, 1880, & it was from that letter that I first knew my right. That letter is the annexed hereto, marked number two.

244 3. To the third interrogatory I say that—

a. I did receive the said letter & have annexed the same hereto, Exhibit Number Two.

b. I did receive the said letter & have annexed the same hereto, Exhibit Number Three.

c. I did receive the said letter, which I have annexed hereto, Exhibit Number Two, & I replied to the same on the 31st March, 1880. The exhibit hereto number four is a copy of the said reply.

d. I did receive the said letter & have annexed the same hereto, Exhibit Number Five. I replied to the same on the 11th May, 1880, & the Exhibit Number Six hereto is a copy of the said reply.

e. I did receive the said letter & have annexed the same hereto, Exhibit Number Seven.

The action I took was to write to Mr. Fisher, the receiver, a letter

dated 15th June, 1880, & the exhibit hereto marked number eight is a copy of that letter. After I received Mr. Corbin's letter of 24th May, 1880, I placed my business in the hands of Mr. T. W. Bacot, solicitor, of Charleston, South Carolina, & as Mr. Corbin stated that he would take an order withdrawing the petition & return it
245 to Mr. Fisher I naturally concluded that he had done so, particularly as I received a letter from Mr. Fisher, dated 6th July, 1880, which I have annexed hereto, marked number nine, and in which Mr. Fisher says the petition was in his, Mr. Fisher's, hands & at my disposal. I then addressed a letter to Mr. D. Roberts, of Charleston, to authorize him to receive the petition from Mr. Fisher.

f. I did receive the said letter, which is already annexed hereto, marked number nine.

4. To the fourth interrogatory I say that appears from the evidence given before the former commission in this cause. When I received the payments on account of interest from time to time from Messrs. Dent, who were then the agents of the defendant company, it was on the understanding that I waived no right of mine under the bonds, & one of those rights both Mr. Corbin & Mr. Bacot have written to me to say is seven per cent. interest. With reference to the receipt to Messrs. Baring (who had then succeeded Messrs. Dent in the agency of the said company) signed by me on the 4th February, 1880, & other receipts to them signed by Messrs. Martin, my bankers, I have to say that those receipts were signed as a matter of course, & on the supposition that the said understanding ar-
246 rived at with Messrs. Dent applied and was in force.

Cross-Interrogatories.

1. To the first cross-interrogatory I say that the petition was drafted by my solicitor, Mr. C. W. Stevens, of number 14 Queen Victoria street, London, under my supervision, neither being acquainted with American law, but appears to have been by Mr. Corbin's letter of 12th March, 1880, exhibit hereto number two, modified by that gentleman to suit the cause & the practice of the court. Of these alterations I have & can have no knowledge. I presume Mr. Bacot prepared the complaint, as he had full charge of the business as my solicitor, He sent me a copy of it in 1880. I have read the principal parts of the said copy complaint before I gave my testimony-in-chief. I do not know whether Richard Biddulph Martin read the complaint, but it is very possible he may have been informed of its contents before he gave his testimony under the previous commission. I myself have no personal knowledge on that point.

2. To the second cross-interrogatory I say that I am unable to answer this question, as I am not a lawyer or engaged in mercan-
247 tile pursuits.

3. To the third cross-interrogatoryI say that this question has already been answered at the former commission—namely, that I cannot find a copy of my letter to Messrs. Martin dated 24th March, 1869, & Messrs. Martin state that they have destroyed the original

in accordance with a rule of their house to destroy all letters addressed to their house ten years after date.

4. To the fourth cross-interrogatory I say that I do not recollect that any demand was made on the company between the date of the protest, April, 1867, & Messrs. Dent's circular dated 22d March, 1869. What then took place is fully shown by the answers to the former commission, & all the correspondence relating thereto upon which I could then lay my hands has been annexed to the said commission. Since the return of the said commission I have found the following further letters which bear upon the subject-matter of this interrogatory, & which are annexed hereto, exhibits marked numbers 10 to 14, inclusive.

5. To the fifth cross-interrogatory I say that the only demand which has ever been made by me or on my behalf of interest at the rate of seven per cent. on the said bonds was through & in the shape of the said complaint which was filed by Mr. Bacot as my solicitor. I did not know until after the 12th March, 1880,
248 what interest I was legally entitled to, but I received the payments on account of interest from time to time, believing that no right of mine under the bonds was waived, & one of these rights I am now advised was seven per cent. interest.

6. To the sixth cross-interrogatory I say that the exhibits numbered from 15 to 21, inclusive, together with those already annexed, comprise all the correspondence which has passed between D. T. Corbin, J. H. Fisher, & myself, with the exception of my two first letters to Mr. Fisher, of 13th September & 13th November, 1879, which I have no copies of.

H. T. COGHLAN.

Examination taken, reduced to writing, & by the witness subscribed & sworn to this the 18 day of August, 1882, before us—

R. O. B. LANE,
J. NUNN,
Commissioners.

249 EXHIBIT No. 1. R. O. B. L.; J. N.

Postmarked Charleston, Dec. 10, 1879. Rec'd Dec. 23, '79.

Receiver's office, South Carolina Railroad Co.; John H. Fisher, receiver.

CHARLESTON, S. C., *Dec.* 3, 1879.

Mr. H. Coghlan, 14 Hyde Park Gardens, London, England.

SIR: Yours of Sept. 13 & Nov. 13 to hand. As my court was to be in session at an early date I delayed reply to the first that I might report any action it might take relating to your bonds.

Yesterday the court adjourned without having made any order relating to them except the payment of interest falling due July 1, 1879, which will be paid by Messrs. Baring Bros. & Co., of your city, early in January next.

As far as I am informed there can be no doubt as to the priority of your bonds, nor has there been any claim made adverse to them.

Should you desire and wish to demand payment of the principal of the bonds you will, of course, make such demand known to the court by petition, which would, of course, receive the consideration due.

Your ob't servant, JNO. H. FISHER, *Receiver.*

250 EXHIBIT No. 2. R. O. B. L.; J. N.

CHARLESTON, S. C., *March* 12, 1880.

H. T. Coghlan, Esq., London, England.

DEAR SIR: Mr. John H. Fisher, receiver of the property of the South Carolina R. R. Co., has handed me your petition relative to bonds of the Louisville, Cincinnati & Charleston R. R. Co. (now South Carolina R. R. Co.), together with your letter of Feb. 10, 1880. The claim made by you is irresistable, but the whole property of the corporation is now in possession of a receiver, who holds it for whoever is entitled to it. You are entitled to priority in payment out of the fund, and, upon proper application and proof of your bonds and coupons, the court will order payment to be made.

On enquiry at the office of the R. R. I am informed that the money to pay the interest from 1866 to 1868 on your bonds, the four half years between the expiration of your bonds and the issue of the mortgage of July 1, 1868, was sent to Messrs. Dent, Palmer & Co., London, and no reason is known as to why you were
251 not paid. What you say about not funding the seven coupons due from 1863 to 1866 is admitted and also not funding your bonds, but it is claimed by the officers of the company that from 1868 onward you were paid interest upon your bonds past due, with coupons of 1863, '4, '5, '6 added. I do not know what view you entertain upon this point.

In this State after an obligation has matured the holder is entitled to demand and receive thereafter and till paid the rate of interest established by law if the obligation itself does not indicate a different rate. The lawful rate of interest in this State is seven per cent. per annum. Under this rule you would be entitled to seven per cent. upon your bonds and coupons severally from the maturity thereof. But if you have actually rec'd your interest and at a different rate it is probable that the court will hold you concluded thereby to that extent. I will at once file your petition, modifying it to suit the cause and the practice of the court. It will be necessary for your bonds and coupons to be proven, and for that purpose you had better forward them to me at once, and I may be able to obtain a decree for your money at the adjourned term (now expected) of the court in May. I do not wish to be too sanguine as to this, as there are many other creditors whose interests may
252 influence the final action of the court. The holders of the first-mortgage bonds are generally content to receive their

interest, being amply secured, and I may be able to obtain an order for payment of your bonds out of current income of the property in the receiver's hands; will do the best possible to accomplish your wishes.

I am, very respectfully, D. T. CORBIN.

253 EXHIBIT No. 3. R. O. B. L.; J. N.

Receiver's office, South Carolina Railroad Co.; John H. Fisher, receiver.

CHARLESTON, S. C., *January 26th*, 1880.

Mr. H. Coghlan, 14 Hyde Park Gardens, London, England.

SIR: Your petition is received, and while I would be happy to serve you in any manner in my power I am not able—not being an attorney and solicitor of the U. S. court—to file your petition and ask the court to take action thereon. I have consulted my own solicitor in reference to your matter, and he informs me that you should retain your own solicitor to represent you in court and to whom you can confide your wishes. I am the receiver and manager of the property, acting strictly under the orders of court as they have been and from time to time may be given me. I know of no reason why my solicitor, D. T. Corbin, Esq., of this city, may not represent you if you desire, but I leave that matter wholly to you and will hold your petition, to be delivered to any solicitor you may
254 direct. The next term of the U. S. court sits on the first Monday of April next, and therefore ample time for you to retain and instruct a proper solicitor.

Respectfully, JNO. H. FISHER, *Receiver.*

255 EXHIBIT No. 4. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *March 31st*, '80.

DEAR SIR: I received on the 29th your letter, dated the 12th inst., enclosing me Mr. Burdell's of the 16th inst.; the same day directed my bankers, Messrs. Martin, to apply to Messrs. Dent for the interest, 1866–'68, but I shall not have Messrs. Dent's answer before Friday next.

With regard to that part of your letter in which you say "it is claimed by the officers of the comp. that from 1868 onwards you were paid interest on your bonds past due with coupons of 1863, '4, '5, '6 added," I should think they must refer to my having been paid 6 per c. (£360) instead of 5 per c. (£300) on the original amount of my bonds (£6,000), an explanation of which my bankers were unable to get from Messrs. Dent, though I directed them to apply for one, and I supposed by my receiving that interest that by the law of South Carolina the comp. was obliged to pay me this 6 per c. on account of their refusing to pay off the principal of the bonds when I applied for it, and that it would continue until they were

redeemed. My bankers in their letter named it at 6 per c.
256 on the bonds. You will notice the amount of interest does not correspond with the amount of the coupons.

As to the rate of interest after an obligation has matured, it rests with the court to say what it is in my case; but could you not ascertain from the officers of the company the whole details of what they consider I am entitled to and let me know your opinion on it, and if I agreed to it it would then only, I think, be necessary to get the formal sanction of the court to complete the business.

With regard to sending out the bonds, I should hope it will not be necessary to do so, as there is no dispute about them, Messrs. Dent having paid the interest on them many years & Messrs. Baring for the last two. It would only be putting me to a heavy expense, risk, & trouble, which I think might be avoided. These bonds have not been out of my bankers', Messrs. Martin's, possession for many years. Could not they be allowed to give them up to Messrs. Barings on the court fixing the amount of money to be paid and on the receiver ordering them to pay it less the expenses? Messrs. Barings would not pay the money without being quite satisfied the bonds were correct, and I should think they could not be otherwise, receiving them from a house like Messrs. Martin's.

The company has had the use of my money more than 40
257 years, so I don't think I am unreasonable in wishing them to pay me off, now that I want it myself, or that by doing so I make any reflection on the security of the bonds.

Enclosed I send you a copy of one of my bonds in case you may require it.

Pray, can you tell me what name a railroad called in 1840 the Mississippi Railroad Company now goes by or into what company it has been absorbed, and may I ask if you have any business connection with Mississippi?

I am, dear sir, yours truly, H. C.

Major D. T. Corbin, solicitor, Charleston, South Carolina, United States.

258 EXHIBIT No. 5. R. O. B. L.; J. N.

CHARLESTON, S. C., *April* 14, 1880.

Mr. H. Coghlan, No. 14 Hyde Park Gardens, London, England.

DEAR SIR: Yours of the 31st ult. is rec'd. As to sending your bonds here for proof, &c., this advice was given you under the assumption that you understood the situation, viz., that all the property of the S. C. R. R. Co. is now in the possession of the U. S. circuit court for this district by its receiver, and that no claim upon that property can be paid but by order of said court. Now, if you desire said court, as I understand you do, to pay certain past-due bonds held by you out of said property your course of procedure is quite plain and no different here from what it is in London.

Your petition has been filed in the cause, and it remains for you

now to prove the allegations contained therein. Until that is done there can be no progress further in the matter.

Your suggestion that an order should be made for the payment of your bonds through Baring Brothers, &c., is impracticable,
259 as above indicated. Interest is so paid, the Barings being held responsible, &c., but no bonds are so paid; they have to be presented & proven in the cause.

If you desire my services in this matter I shall have to require you to send me a fee of $500.00.

Very respectfully, D. T. CORBIN.

260 EXHIBIT No. 6. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *May 11th*, '80.

DEAR SIR: I have to acknowledge the receipt of your letter of the 14th April, in which you require me, if I desire your services in this matter, to send you a fee of $500. As I am unable to agree to this the business between us is at an end, and I will make other arrangements.

I am, &c., H. C.

Major D. T. Corbin, Charleston, South Carolina, United States.

261 EXHIBIT No. 7. R. O. B. L.; J. N.

CHARLESTON, S. C., *May* 24, 1880.

DEAR SIR: Yours of the 11th inst. rec'd. Having declined to remit the usual fee, it was quite superfluous to announce "business between us at an end."

I will take an order withdrawing the petition filed in your behalf from the records of the court, & will return the same to Mr. J. H. Fisher, receiver, from whom, by your direction, it was rec'd.

In confirmation of my advice to you it was said by the chief justice in court yesterday that "if any of these first-mortgage bonds were properly before the court he would feel bound to provide for their payment, but as they were not no orders would be made in regard to them."

Permit me to wish you better success with your next arrangement.

I am, dear sir, very truly yours, D. T. CORBIN.

262 EXHIBIT No. 8. R. O. B. L.

14 HYDE PARK GARDENS, LONDON, *June 15th*, '80.

DEAR SIR: Having received a letter from Mr. Corbin, in which he says, "I shall have to require you to send me a fee of $500," — not understanding such a demand, I wrote him as follows, viz: "As I am unable to agree to this, the business between us is at an end, and I will make other arrangements." I have since had a letter from that gentleman, saying he will take an order withdrawing the

petition, & will return the petition to you. I should be much obliged to know if he has done so, as he had no instructions from me to withdraw the petition, and if it is now in your possession.

I remain, dear sir, yours very truly, H. C.

Mr. John Fisher, receiver South Carolina Railroad Company, Charleston, South Carolina.

263 EXHIBIT No. 9. R. O. B. L.; J. N.

Receiver's office, South Carolina Railroad Co.; John H. Fisher, receiver.

CHARLESTON, S. C., *July 6th*, 1880.

Mr. H. Coghlan, 14 Hyde Park Gardens, London, England.

DEAR SIR: On my return from New York I have yours of 15th ulto. Mr. Corbin has handed me your petition, and I find the following endorsement thereon:

"NOTE.—The petitioner, H. T. Coghlan, by a letter to me dated May 11th, 1880, declined to pay me a fee for attending to this case, and I have therefore withdrawn this petition from the files of the court and return same to J. H. Fisher, receiver, from whom I rec'd it.

D. T. CORBIN.

May 28, '80."

The petition is at your disposal, and I shall be pleased to receive your instruction as to the disposition of it, as the matter is outside of my official duties.

Yours very respectfully,

JNO. H. FISHER, *Receiver.*

264 EXHIBIT No. 10. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, *Jan. 12th*, '76.

DEAR SIR: I should be much obliged if you would let me, if the company is now willing to, pay off my South Carolina bonds so long overdue, with seven coupons so long in arrears, as there is no excuse for their not doing so now their means being ample, according to their own report.

The late Mr. Lancelot Dent was kind enough to call upon me one evening respecting these bonds and I understood your house had written to the directors about them, but since his death I have heard nothing further.

I am, dear sir, yours very truly, H. C.

Edward Howley Palmer, 11 King's Arms Yard, E. C.

265 EXHIBIT No. 11. R. O. B. L.; J. N.

BANK OF ENGLAND, *15th Jan'y*, '76.

DEAR SIR: I know of no fresh arrangement of the South Caro-

lina Railway Company beyond that contained in their offer of exchange of which you are aware.

It is a pity you should refuse to accept what almost all the other bondholders have agreed to take.

Y'rs faithfully, EDW'D H. PALMER.

266 EXHIBIT No. 12. R. O. B. L.; J. N.

JAN. 17TH, '76.

DEAR SIR: I cannot possibly consent nor do I think on reflection you would now advise me to surrender my bonds of the South Carolina Railway Company issued by your house with the guarantee of the State for new bonds with the guarantee of the company only, but I do not consider that this for a moment justifies the company in refusing to pay me the coupons so long overdue and which they have many years ago paid to the other bondholders. These coupons they will ultimately, there is little doubt, have to pay in accordance with the law of the State, with compound interest, as well as my bonds which are long overdue; and as the company is now so flourishing, I should have thought they would have been of opinion that it would be best to pay them off at once, and it was respecting paying them & my bonds that I understood Mr. Dent's letter had been written to the directors, but which remained unanswered. Thanking you for the kind answer you have been good enough to send me—

I remain, dear sir, yours very truly, H. C.

Edward Howley Palmer, Bank of England, E. C.

267 EXHIBIT No. 13. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, *Jan. 27th*, '76.

DEAR SIR: I should be much obliged if you will let me know if you have received a letter I addressed you on the 17th inst., as I have had no answer or acknowledgment of that letter.

I remain, dear sir, yours very truly, H. C.

Edward Howley Palmer, Esq., Bank of England, E. C.

268 EXHIBIT No. 14. R. O. B. L.; J. N.

BANK OF ENGLAND, 29 *Jan'y*, 1876.

DEAR SIR: I am sorry you- note has remained without a reply, but I requested my firm to answer it.

The fact is there is nothing to be done, if you decline to accept the bonds offered for conversion, as all other holders have done, but for you to employ some lawyer in America with instructions to take legal proceedings against the company.

As matter of advice, I cannot think that you would act wisely in adopting such a course.

I am, dear sir, yours faithfully,

EDW'D H. PALMER.

H. Coghlan, Esq.

269 EXHIBIT No. 15. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *Dec. 26th*, '79.

SIR: I have to thank you for your letter of the 3d inst., which I received on the 23d.

With regard to the petition, I am afraid there will be some delay unless you can furnish me a copy of the proper form, the expense of which & your letters, &c., I will be happy to pay, on your letting me know the amount, to any one you may name in London.

I am told the petition must be drawn out by an American lawyer acquainted with the law of South Carolina and the law of the United States, but I don't know any such in London to apply to. I have written to the secretary of your legation here, but have not yet received his answer. Pray, what is the full name of the court that I have to address the petition to?

I am sure, under the circumstances, you will excuse my request, and remain, sir,

Your obedient servant, H. C.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, United States.

270 EXHIBIT No. 16. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *Dec. 29th*, '79.

SIR: I should be obliged if you will let me know if the petition should be sent by post to yourself and by what date, and whether it is requisite to send out the bonds with it, or if it will be sufficient to deliver them to Messrs. Baring when they receive your order for the payment of them and the arrears. I am sorry to trouble you with another letter, but I forgot to make this enquiry when I wrote to you on the 26th inst.

I remain, sir, your obedient servant, H. C.

Mr. John H. Fisher, receiver South Carolina railroad, Charleston, United States.

271 EXHIBIT No. 17. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *Jan. 10th*, '80.

SIR: In order to save time I have had the enclosed petition drawn out, which I trust is in proper form in all respects. If not, and it won't do, will you kindly telegraph to that effect and let me know the alterations necessary and I will have a fresh one drawn out in accordance with your instructions.

Hoping, however, that this may not be necessary and that the

court will excuse any inadvertence on my part, which is quite unintentional,

I remain, sir, &c., H. C.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, South Carolina, United States.

Rec. 10th Jan., '80.

272 EXHIBIT No. 18. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *Feb. 10th*, '80.

SIR: I have to acknowledge the receipt this morning of your letter dated the 26 ult., and shall be obliged by your placing my petition in the hands of the gentleman you name, Mr. D. T. Corbin, solicitor of your city.

I think there is nothing more I need add, as the petition itself explains all that gentleman will require.

With regard to the interest, I suppose it will be the legal rate of South Carolina. I have held these bonds, I think, getting on for 40 years.

I remain, sir, your ob't serv't, H. C.

Mr. John H. Fisher, receiver South Carolina Railroad Company, Charleston, United States.

273 EXHIBIT No. 19. R. O. B. L.; J. N.

RECEIVER'S OFFICE, SO. CA. R. R. CO.,
CHARLESTON, S. C., *M'ch 8th*, 1880.

H. Coghlan, Esq., 14 Hyde Park Gardens, London, Eng.

DEAR SIR: Your favor of Feb. 10, 1880, was duly received and I handed it to D. T. Corbin, Esq., attorney-at-law, who will communicate with you in regard to it.

Yours respectfully, JOHN H. FISHER, *Rec'r.*

274 EXHIBIT No. 20. R. O. B. L.; J. N.

OFFICE SO. CA. RAILROAD CO.,
CHARLESTON, *March 16th*, 1880.

Major D. T. Corbin, att'y-at-law & solicitor.

DEAR SIR: I- reply to your enquiry, I would state that funds for the payment of interest on all the sterling bonds of the Louisville, Cincinnati and Charleston and South Carolina Railroad Companies, payable in London, has been remitted to Messrs. Dent, Palmer & Co., of that city, the agents of the company, up to July 1, 1879, and I know no reason why the interest has not been paid on the bonds held by Mr. Thomas Coghlan, as claimed by him. Mr. Dent, Palmer & Co. can no doubt explain.

Yours very respectfully, F. M. BURDELL,
Gen'l Book-keeper.

275 EXHIBIT No. 21. R. O. B. L.; J. N.

14 HYDE PARK GARDENS, LONDON, *April 3d*, '80.

DEAR SIR: Enclosed I send you Messrs. Martins' answer to my letter of the 29th ult. You will see Messrs. Dent; inform them that the interest was funded, not paid, in cash. This applies also to the interest July, 1866, which has evidently been omitted in their letter by mistake.

I wrote to you on the 31st ult., but think it best you should have Messrs. Dent's answer at once. So now write again.

I remain, dear sir, yours truly, H. C.

Major D. T. Corbin, solicitor, Charleston, South Carolina, United States.

276 EMPIRE OF GREAT BRITAIN, LONDON, ENGLAND.

We, Richard Ouseley Blake Lane and Joshua Nunn, commissioners, duly commissioned as such, do hereby certify and make known that the foregoing deposition of Henry Thomas Coghlan was taken before us on the 18th day of August, 1882, between the hours & at the place in the caption hereof above mentioned; that the examinations, responses, & statements of the said deponent were reduced to writing in our presence by Herbert C. Goff & by the said deponent sworn to & subscribed in our presence at the time & place aforesaid, & that the said deponent is a resident in the Empire of Great Britain.

In testimony whereof we do hereunto set our hands & official seals, at No. 3 Tanfield Court Temple aforesaid, this 18th day of August, 1882.

R. O. B. LANE. [SEAL.]
J. NUNN. [SEAL.]

277 Endorsements on cover:

Deposited package in the post office, Fleet street, London, England, this the 18th day of August, 1882, by—

R. O. B. LANE.

Received Sept. 1st, 1882, at 3 p. m.

J. E. HAGOOD, JR.,
Dep'ty Clerk.

278 HENRY THOMAS COGHLAN, Complainant,
vs.
THE SOUTH CAROLINA RAILROAD CO. *et al.*, Defendants.
In Equity.
April Term, 1883.

This case came up for hearing. Bill, answers, pleadings, and testimony was read to the court. Argument by Mr. Bacot & Young on behalf of complainant, and Julian Mitchell on behalf of The South Carolina Railroad Co., defendants. The court took the case under advisement April 21, 1883.

279 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN }
vs.
THE SO. CA. R. R. Co. *et al.* }

This cause having come on to be heard at the April term, 1883, and counsel on both sides having been heard, it is thereupon ordered, adjudged, and decreed that the measure of the recovery to which the plaintiff is entitled upon the bonds and coupons of the Louisville, Cincinnati and Charleston Railroad Company, held by him and proved in this cause, is as follows:

First. Upon each bond for two hundred and fifty pounds sterling and past-due coupons attached, so held and proved, he is entitled to receive the sum of three hundred pounds sterling, with interest thereon from 1st July, 1868, at the rate of five per cent. per annum, payable semi-annually as if said bond had on 1st July, 1868, been exchanged for a new bond for three hundred pounds sterling, dated
1 July, 1868, less all amounts that may have heretofore been
280 paid on account of the same by the South Carolina Railroad Company or the receiver thereof as payment of the semi-annual interest.

Second. Upon each bond for five hundred pounds sterling & past-due coupons attached so held and proved he is entitled to recover the sum of six hundred pounds sterling, with interest thereon from 1st July, 1868, at the rate of five per cent. per annum, payable semi-annually, as if said bonds & coupons had been on 1st July, 1868, exchanged for a new bond for six hundred pounds sterling, less all amounts that may have heretofore been paid as payment of the semi-annual interest upon the same by the South Carolina Railroad Company or the receiver thereof.

It is further ordered, adjudged, and decreed that it be referred to J. E. Hagood, Esq., as special master, to take an account of the amount due on said bonds and coupons, according to the principles of this decree, allowing all proper debits & credits, and that he report the same to the court, with leave to report any special matter.

15th December, 1883.

HUGH L. BOND, *C't Judge.*

Filed 15th December, 1883.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

281 THE UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District.

In Equity.

HENRY T. COGHLAN
against
THE SOUTH CAROLINA RAILROAD CO. *et al.*
} Order for Leave to Appeal.

And now comes Henry T. Coghlan, the plaintiff above named, after a final decree entered in this cause, and shows to the court the matter in dispute exceeds the sum of five thousand dollars, and thereupon the said Henry T. Coghlan appeals from the said final decree to the Supreme Court of the United States to be holden at Washington on the second Tuesday in October next, and the same is accordingly —, and the appellant is ordered to serve the usual citation according to law.

Dec. 5th, 1885.

HUGH L. BOND, *C't Judge.*

Filed 5 Jan'y, 1885.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

282 THE UNITED STATES OF AMERICA,
South Carolina District.

In the Circuit Court.

HENRY THOMAS COGHLAN
vs.
THE S. C. R. R. CO. *et al.*

On motion of Thomas W. Bacot, pl'ff's att'y, it is ordered that he have leave to withdraw his name, & that Messrs. Inglesby & Miller be substituted as plaintiff 's attorney- in his room and stead, it being understood that the costs as pl'ff's att'y up to the present time belong to the said Thomas W. Bacot.

17th Nov., '85.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

T. W. BACOT,
Pl'ff's Att'y.

Filed 17 Nov., 1885.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

283 THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In Equity.

HENRY THOMAS COGHLAN
against
THE SOUTH CAROLINA RAILROAD CO. *et al.*

Know all men by these presents that we, David Roberts and Charles F. Hard, are held and firmly bound unto the South Carolina Railroad Co. in the full and just sum of one thousand dollars, to be paid to the said The South Carolina Railroad Company, their certain attorneys, successors, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the third day of December, A. D. 1885.

Whereas lately, at a circuit court of the United States, fourth circuit, district of South Carolina, holden at Charleston, in a suit depending in said court between Henry T. Coghlan, complainant, and the South Carolina Railroad Company, a decree was rendered against the said Henry T. Coghlan, and the said Henry T. Coghlan having obtained an allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the afore-
283½ said suit, and a citation directed to the said The South Carolina Railroad Co., citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next:

Now, the condition of the above obligation is such that if the said Henry T. Coghlan shall prosecute the said appeal to effect and answer all damages and costs if he, the said Henry T. Coghlan, fail to make his said pleas good, then the above obligation to be void; else to remain in full force and virtue.

DAVID ROBERTS. [SEAL.]
CHAS. F. HARD. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. W. ST. AMAND.

I, J. E. Hagood, clerk of said court, do hereby certify that the foregoing is a true copy of the original bond now on file in my office.

Seal U. S. Circuit Court, District of So. Carolina.

Given under my hand and seal of said court, at clerk's office, Charleston, S. C., this the 18th day of October, A. D. 1886.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

284 [Endorsed:] The United States of America, South Carolina district, fourth circuit. In equity. Henry T. Coghlan against The S. C. R. R. Co. *et al.* Bond. Approved. Hugh L. Bond, c't judge. Filed Dec. 5, 1885. J. E. Hagood, C. C. C. U. S., dist. S. C. [Stamped:] Office Supreme Court U. S. Filed Oct. 20, 1886. James H. McKenney, clerk.

285 THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit.

In Equity.

HENRY T. COGHLAN
against
THE SOUTH CAROLINA RAILROAD CO. *et al.* } Citation.

To the South Carolina Railroad Company *et al.*:

You are hereby cited and admonished to be and appear at the Supreme Court *in* the United States, to be holden at Washington on the second Monday in October next, pursuant to a claim and allowance of appeal filed in the circuit court of the United States for the district of South Carolina, and wherein Henry T. Coghlan is plaintiff in error and you are defendant, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties.

Witness the Honorable Hugh L. Bond, judge of the circuit court, this fifth day of December, 1885.

HUGH L. BOND, *C't Judge.*

H. R. Boykin, deputy marshal, being duly sworn, says he served the within citation upon W. J. Magrath, by leaving a copy thereof with Mary A. Mensing, a person of discretion residing at the residence of the said W. J. Magrath, on the 1st day of October, '86, and that the said W. J. Magrath is the person named in the pleadings in this case as the president of the South Carolina Railroad Company. Deponent farther says that he served the within citation upon Mitchell & Smith, the attorneys for John H. Fisher, receiver, by leaving a copy thereof with T. W. Durkins on the 1st day of Oct., '86, whom he knows to be the head clerk in the office of said Mitchell & Smith.

H. R. BOYKIN,
Deputy Marshal.

Sworn to & subscribed before me this 1st day of October, 1886.

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

286 [Endorsed:] United States of America, South Carolina district, fourth circuit. In equity. Henry Coghlan against The S. C. R. R. Co. *et al.* Citation. Filed 5 December, 1885. J. E. Hagood, C. C. C. U. S., dist. S. C.

[Endorsed:] Entered in my office Oct. 1st, '86, folio 104. E. M. Boykin, U. S. marshal.

We accept service of the within citation this 30th day of Sept.,

1886, for Mordecai & Co., George Parsons, Leslie Chase, J. C. Maybin, and the ex'rs of Chas. Macbeth.

BUIST & BUIST,
Att'ys of Above Parties.

For B. F. Huger, trustee—
B. H. RUTLEDGE.

For ex'or of J. C. Cochran, dec's'd—
RUTLEDGE & YOUNG.

For ex'r'x of Jno. Hanckel, trustee, dec's'd—
THO. M. HANCKEL, *Att'y.*

For Robert Adger, trustee—
SMYTHE & LEE, *Att'ys.*

For H. Pinckney Walker, trustee—
H. E. YOUNG,
Per B. W. SALE.

For South Carolina R'w'y Co.—
BRAWLEY & BARNWELL.

For People's S. Institution—
LORD & INGLESBY.

286½ And on the 28th day of June, 1887, came into court the plaintiff, Henry Thomas Coghlan, by his solicitors, and filed the following mandate of Supreme Court, which mandate is in the following words:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Whereas lately, in the circuit court of the United States for the district of South Carolina, before you or some of you, in a cause between Henry Thomas Coghlan, complainant, and The South Carolina Railroad Company *et al.*, defendants, wherein the decree of the said circuit court entered in said cause on the 15th day of December, A. D 1883, was in favor of the said defendants, The South Carolina Railroad Company *et al.*, and against the said complainant, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

287 And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-six, of the said Supreme Court this cause being called to the attention of the court by Mr. W. Hallett Phillips in behalf of counsel, and a motion by the appellant to dismiss this cause having been filed, it is thereupon, in pursuance of said motion, now here ordered, adjudged, and decreed by this court that this appeal be, and the same is hereby, dismissed with costs, and that the said defendants, The South Carolina Railroad Company *et al.*, recover against the said complainant for their costs herein expended and have execution therefor.

MAY 27TH, 1887.

You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the ninth day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

Costs of defendants.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

288 [Endorsed:] Supreme Court of the United States. October term, 1886. No. 1089. Henry T. Coghlan *vs.* The South Carolina Railroad Company *et al.* Mandate. Filed June 28th, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

289 And on the 1st day of August, 1887, came into court J. E. Hagood, special master, and filed his report, which report is in the words and tenor following:

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

H. T. COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

To the hon. the judge of said court:

I respectfully report that in pursuance of the order of this court herein dated the 15th day of December, 1883, I have held references and calculated the amount due on the bonds of the plaintiff and find that the amount up to 1st July, A. D. 1887, is ten thousand six hundred and twenty pounds sterling, as per statement hereto annexed marked Exhibit "A."

I further report that the amount due on said bonds on the
290 28th Feb'y, 1883, was eight thousand six hundred and twenty-five $\frac{20}{100}$ pounds sterling, as per statement hereto annexed marked Exhibit "B."

I further report that on that day, viz., 28th February, 1883, the sum of forty-four thousand six hundred ($44,600.00) dollars in legal-tender notes was tendered to T. W. Bacot, Esqr., then plaintiff's att'y, as per the offer of tender filed in this court.

I report further that the bonds held by the complainant, H. T. Coghlan, are bonds of the Louisville, Cincinnati and Charleston Railroad Company issued under the act of the State of South Carolina of 12 December, 1837, and secured by the statutory mortgage created by said act. Under this act the rate at which the pound sterling is to be taken is not stated. Under the decree, however, of this court made the 15th day of December, A. D. 1883, said bonds

were to be treated as if exchanged for the new bonds secured by the mortgage of the first day of July, 1868, a copy whereof is herewith filed. By the terms of said bonds the pound sterling in all payment- was to be estimated at four dollars and forty-four and four-ninths cents ($4.44\frac{4}{9}$). I therefore report that the pound sterling in this case must be taken as worth $4.44\frac{4}{9}$.

Aug. 1, 1887.

J. E. HAGOOD,
Special Master.

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COGHLAN
vs.
So. Ca. R. R.

EXHIBIT "A."

Six (6) bonds for £600 each	£3,600
Twelve (12) bonds for £300 each	3,600
	£7,200

Int. at 5 %, with semi-annual rests; int. on int. calculated at 5 %.

From	1 July,	1879,	to 1 Jan.,	1880,	on £7,200,	at 5 %	£180	
"	1 Jan.,	1880,	" 1 July,	'87,	" 180,	"	67	$\frac{50}{100}$
"	1 Jan.,	1880,	" 1 July,	'80,	" 7,200,	"	180	
"	1 July,	1880,	" 1 July,	'87,	" 180,	"	63	
"	1 July,	1880,	" 1 Jan.,	'81,	" 7,200,	"	180	
"	1 Jan.,	1881,	" 1 July,	'87,	" 180,	"	58	$\frac{50}{100}$
"	1 Jan.,	1881,	" 1 July,	'81,	" 7,200,	"	180	
"	1 July,	1881,	" 1 July,	'87,	" 180,	"	54	
"	1 July,	1881,	" 1 Jan.,	'82,	" 7,200,	"	180	
"	1 Jan.,	1882,	" 1 July,	'87,	" 180,	"	49	$\frac{50}{100}$
"	1 Jan.,	1882,	" 1 July,	'82,	" 7,200,	"	180	
"	1 July,	1882,	" 1 July,	'87,	" 180,	"	45	
"	1 July,	1882,	" 1 Jan.,	'83,	" 7,200,	"	180	
"	1 Jan.,	1883,	" 1 July,	'87,	" 180,	"	40	$\frac{50}{100}$
"	1 Jan.,	1883,	" 1 July,	'83,	" 7,200,	"	180	
"	1 July,	1883,	" 1 July,	'87,	" 180,	"	36	
"	1 July,	1883,	" 1 Jan.,	'84,	" 7,200,	"	180	
"	1 Jan.,	1884,	" 1 July,	'87,	" 180,	"	31	$\frac{50}{100}$
"	1 Jan.,	1884,	" 1 July,	'84,	" 7,200,	"	180	
"	1 July,	1884,	" 1 July,	'87,	" 180,	"	27	
"	1 July,	1884,	" 1 Jan.,	'85,	" 7,200,	"	180	
"	1 Jan.,	1885,	" 1 July,	'87,	" 180,	"	22	$\frac{50}{100}$
"	1 Jan.,	1885,	" 1 July,	'85,	" 7,200,	"	180	
"	1 July,	1885,	" 1 July,	'87,	" 180,	"	18	
"	1 July,	1885,	" 1 Jan.,	'86,	" 7,200,	"	180	
"	1 Jan.,	1886,	" 1 July,	'87,	" 180,	"	13	$\frac{50}{100}$
"	1 Jan.,	1886,	" 1 July,	'86,	" 7,200,	"	180	
"	1 July,	1886,	" 1 July,	'87,	" 180,	"	9	
"	1 July,	1886,	" 1 Jan.,	'87,	" 7,200,	"	180	
"	1 Jan.,	1887,	" 1 July,	'87,	" 180,	"	4	$\frac{50}{100}$
"	1 Jan.,	1887,	" 1 July,	'87,	" 7,200,	"	180	
							£3,420	00

Principal	7,200
Int.	3,420
	£10,620

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EXHIBIT B."

Six (6) bonds for £600 each	3,600
Twelve (12) " 300 "	3,600
	£7,200

Int. @ 5% and int. on int. @ 5%.

From 1 July,	1879,	to 1 Jan.,	1880,	on £7,200		180	
1 Jan.,	'80,	" 28 Feb.,	'83,	" 180		28	50
1 Jan.,	'80,	" 1 July,	'80,	" 7,260		180	
1 July,	'80,	" 28 Feb.,	'83,	" 180		24	
1 July,	'80,	" 1 Jan.,	'81,	" 7,200		180	
1 Jan.,	'81,	" 28 Feb.,	'83,	" 180		19	50
1 Jan.,	'81,	" 1 July,	'81,	" 7,200		180	
1 July,	'81,	" 28 Feb.,	'83,	" 180		15	
1 July,	'81,	" 1 Jan.,	'82,	" 7,200		180	
1 Jan.,	'82,	" 28 Feb.,	'83,	" 180		10	50
1 Jan.,	'82,	" 1 July,	'82,	" 7,200		180	
1 July,	'82,	" 28 Feb.,	'83,	" 180		6	
1 July,	'82,	" 1 Jan.,	'83,	" 7,200		180	
1 Jan.,	'83,	" 28 Feb.,	'83,	" 180		1	50
1 Jan.,	'83,	" 28 Feb.,	'83,	" 7,200		60	
				Int. and int. on int.		£1,425	20
				Principal	£7,200		
				Int. and int. on int.	1,425	20	
						£8,625	20

Recapitulation.

£10,620 sterling, to be computed at $\$4.44\frac{4}{9}$	$47,200
Int. for 4 months and 1 day @ 5%	795 28
	$47,995 28

Amount in £ sterling in dollars.

	£10,620	
Int. 123 days @ 5%	178 18 9	@ $\$4.44\frac{4}{9} = \$795.28$
	£10,798 18 9	

293 UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Complainant,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

THOS. W. BACOT, sworn, says:

On the 28 February, 1883, Mr. Smith, for the railroad Co., and Mr. Bacot, for Mr. Coghlan, went to the First National Bank of Charleston.

Mr. Smith received from the cashier packages containing in all forty-four thousand six hundred (44,600) dollars in legal-tender notes and tendered them, together with written notice of tender, to Mr. Bacot.

Mr. Bacot declined to accept the tender.

The packages were then redelivered by Mr. Smith to the cashier of the bank.

Mr. Bacot then signed an acknowledgement endorsed on the copy notice of tender, hereto annexed, substantially as follows:

294 "I acknowledge that the enclosed notice was served on me in the city of Charleston this 28 February, 1883, and that at the same time the sum of forty-four thousand six hundred ($44,600) dollars in legal-tender bills of the United States were tendered to me."

It is admitted that Mr. Smith presented to the cashier of the bank the check of the South Carolina Railway Co. for forty-four thousand six hundred dollars ($44,600) and received from him that amount in legal-tender bills, which he tendered.

295 UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Complainant,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

To Thomas W. Bacot, Esq., att'y for Henry Thomas Coghlan, complainant:

Take notice that we herewith produce and tender to you forty-four thousand six hundred dollars in legal-tender bills of the United States of America, in full payment of the entire amount now due on the bonds of the Louisville, Cincinnati and Charleston Railroad Company, owned by Henry Thomas Coghlan and represented by you in above matter, together with the amount due for costs in above matter accrued to date and exchange at current rates on demand bills for the amount tendered as due on said bonds.

Charleston, 28th Feb'y, 1883.

(S'g'd) MITCHELL & SMITH, *Att'ys.*

296 [Endorsed:] United States of America, dist. of South Carolina, fourth circuit. In the circuit court. H. T. Coghlan *vs.* South Carolina Railroad Company *et al.* Report of Special Master J. E. Hagood. Filed Aug. 1, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

297 The South Carolina Railroad Company to Henry Gourdin, H. P. Walker, James M. Calder. } First Mortgage.

EXHIBIT "C."

UNITED STATES OF AMERICA, *State of South Carolina.*

This indenture made and executed this first day of July, in the year of our Lord one thousand eight hundred and sixty-eight, between The South Carolina Railroad Company, a body corporate in and of the State aforesaid, of the first part, and Henry Gourdin, of Charleston, in the State of South Carolina; H. Pinckney Walker, Her Britannic Majesty's consul, resident in Charleston, and James M. Calder, of the second part:

Whereas the Louisville, Cincinnati and Charleston Railroad Company, under and by virtue of the act of the General Assembly of the State of South Carolina, ratified the twelfth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, issued its bonds bearing date the first day of July, in the year of our Lord one thousand eight hundred and thirty-eight, for the sum of four hundred and fifty thousand pounds sterling, redeemable on or before the first day of January, in the year of our Lord one thousand eight hundred and sixty-six, the principal and interest of a part of said bonds being payable in London and the principal and interest of the other part of said bonds being payable in Charleston at the rate of four dollars and forty-four cents to the pound sterling, upon all of which bonds the guarantee of the State of South Carolina was endorsed in pursuance of the act aforesaid, and in and by said act it was further provided "that the whole estate, property, and funds within the State which said company may then possess or shall afterwards acquire shall thenceforth stand pledged and mortgaged to the State without any further act or deed on the part of the company for the faithful and punctual performance on the part of said company of such contract in priority and preference of any
298 other debt which the said company may then or at any other time owe;"

And whereas the corporate name of the Louisville, Cincinnati and Charleston Railroad Company was, by act of the General Assembly of the State of South Carolina, ratified the nineteenth day of December, in the year of our Lord one thousand eight hundred and forty-three, changed to that of the South Carolina Railroad Company;

And whereas the South Carolina Railroad Company was unable to pay the bonds hereinabove referred to on the first day of Jan-

uary, in the year of our Lord one thousand eight hundred and sixty-six, when the same became due and payable, and was desirous, by and with the consent of the holders of said bonds, to extend the period of payment of said debt and execute new bonds, to be guaranteed by the State, in substitution of the bonds bearing date the first day of July, in the year of our Lord one thousand eight hundred and thirty-eight, and petitioned the General Assembly of the State of South Carolina to guarantee such new bonds, and by act of the General Assembly of the State of South Carolina, ratified the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-five, the said South Carolina Railroad Company was authorized to issue the bonds for the principal and interest of the debt above mentioned, and to substitute said bonds for the bonds of the Louisville, Cincinnati and Charleston Railroad Company delivered up the treasurer of the State of South Carolina was authorized by said act to endorse upon said bonds so to be given in substitution that the faith and funds of the State are pledged to the punctual payment of the principal and interest of the said bonds; and in and by said act it was further provided that "as soon as the treasurer of the State shall have made any such endorsement on any such bonds all the estate, property, and funds mortgaged to the State by the act ratified on the twentieth day of December, eighteen hundred and thirty-seven, shall continue mortgaged and pledged to the State to secure the State against any liability on said
299 loan, and the endorsement to be made in pursuance of this act for the payment thereof in like manner and to the same extent as the said estate, property, and funds are now mortgaged, and with all the rights of priority and lien given by said act to the State;"

And whereas, under and by virtue of the said act of the General Assembly of the State of South Carolina, the South Carolina Railroad Company issued its bonds, bearing date the first day of July, in the year of our Lord one thousand eight hundred and sixty-six, a part of said bonds being by the terms thereof redeemable on the first day of July, eighteen hundred and seventy-one, and the balance of said bonds being by the terms thereof redeemable at stated periods between the first day of July, one thousand eight hundred and seventy-one, and the first day of July, one thousand eight hundred and eighty-five, with interest thereon at the rate of five per centum per annum, payable semi-annually, the principal and interest of a part of said bonds being payable at the banking-house of Messrs. Dent, Palmer & Company, in the city of London, and the principal and interest of the other part of said bonds being payable in the city of Charleston, at the rate of four dollars and forty-four cents to the pound sterling; and by act of the General Assembly of the State of South Carolina, ratified the nineteenth day of September, one thousand eight hundred and sixty-six, entitled "An act to amend an act entitled 'An act to lend the credit of the State to secure certain bonds to be issued by the South Carolina Railroad Company,'" it was enacted "that so much of the section of the act, to which this is an amendment, as requires the outstanding bonds to be delivered up to

the treasurer and cancelled before the guarantee of the State is endorsed upon the new bonds be, and the same is hereby, repealed," and "that to effect the exchange of the new bonds for those now outstanding the Governor of the State be, and is hereby, authorized to appoint an agent of the State to whom the treasurer, after endorsing upon the bonds to be issued in pursuance of the act ratified December the twenty-first, in the year of our Lord one thousand
300 eight hundred and sixty-five, the guarantee of the State, as provided in said act, shall deliver said bonds, and by whom the exchange of the new bonds for the old shall be effected," and under said power his excellency the Governor of the State, on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-seven, appointed W. J. Magrath the agent of the State to effect such exchange;

And whereas the bonds authorized by the act of the General Assembly of the State ratified the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-five, have been duly executed by the said company and the guarantee of the State has been endorsed thereon by the treasurer of the State, but the full and complete substitution of said bonds for the bonds of the Louisville, Cincinnati, and Charleston Railroad Company has not been consummated;

And whereas the South Carolina Railroad Company is also indebted to divers persons in the sum of one hundred and seventy-five thousand dollars by its bonds bearing date at different periods in the year of our Lord one thousand eight hundred and forty-nine, and payable a part thereof on the first day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and a part thereof on the first day of October, in the year of our Lord one thousand eight hundred and sixty-eight, with interest at six per cent. per annum, the principal and interest thereof payable at the Southwestern Railroad Bank, in Charleston, upon negotiation had between the holders of the said several bonds hereinbefore referred to and the South Carolina Railroad Company, it has been deemed advisable for the better securing of the said debts that all the said bonds should be delivered up and cancelled and new bonds issued in substitution thereof, the payment of said bonds to be secured by a mortgage to trustees of the estate, real and personal, of the South Carolina Railroad Company, including therein all the real and personal property of the said company situate within the limits of the State of Georgia and not included in the statutory mortgage created by the act of eighteen hundred and sixty-seven;

301 And whereas the South Carolina Railroad Company, in pursuance of said negotiations, hath resolved to execute its bonds, payable in London, for an amount not exceeding in the aggregate the sum of five hundred and forty-three thousand five hundred pounds sterling, seven hundred of said bonds, numbered from one to seven hundred, to be for the sum of five hundred pounds sterling each, six hundred and eighty of said bonds, numbered from one to six hundred and eighty, to be for the sum of two hundred and fifty pounds sterling each, two hundred of said bonds, numbered

from one to two hundred, to be for the sum of one hundred pounds sterling each, and one hundred and forty of said bonds, numbered from one to one hundred and forty, to be for the sum of twenty-five pounds sterling each, all of said bonds to be dated on the first day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and to be payable to bearer, with interest thereon at the rate of five per cent. per annum, payable semi-annually, on the first days of January and July, on presentation of the proper coupons, at the office of Messrs. Dent, Palmer & Company, in the city of London, where the principal will also be redeemed, the principal of said bonds to be payable on the first days of every January and July between the first day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and the first day of January, in the year of our Lord one thousand eight hundred and eighty-eight, the dates of maturity of said bonds to be so arranged that bonds to the amount of one-twentieth of the principal sum above specified shall be due and payable on the first day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and on the first day of every January and July succeeding, which said bonds shall be substituted for the sterling bonds now outstanding and payable in London;

And whereas the South Carolina Railroad Company hath also resolved to execute certain other bonds, not exceeding in the aggregate the sum of seventy-six thousand five hundred pounds
302 sterling, one hundred of said bonds, numbered from one to one hundred, to be for the sum of five hundred pounds sterling each, eighty of said bonds, numbered from one to eighty, to be for the sum of two hundred and fifty pounds sterling each, fifty-five of said bonds, numbered from one to fifty-five, to be for the sum of one hundred pounds sterling each, and forty of said bonds, numbered from one to forty, to be for the sum of twenty-five pounds sterling each, all of said bonds to be dated on the first day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and to be payable to bearer, with interest at the rate of five per centum per annum, payable semi-annually, on the first days of January and July, on presentation of the proper coupons, at the office of the South Carolina Railroad Company, in the city of Charleston, where the principal also will be redeemed, the pound sterling in all such payments to be estimated at four dollars and forty-four and four-ninths cents, the principal of a part of said bonds to be, by the terms thereof, payable on the first day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and the principal of the residue of said bonds to be, by the terms of said bonds, payable at stated periods between the first day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and the first day of January, in the year of our Lord one thousand eight hundred eighty-eight, which said bonds shall be substituted for the sterling bonds dated the — day of ——, in the year of our Lord one thousand eight hundred and —, and payable in Charleston;

And whereas the South Carolina Railroad Company hath also

resolved to substitute for the bonds issued in the year eighteen hundred and forty-nine and payable in currency of the United States at the Southwestern Railroad Bank, in the city of Charleston, or to apply to the satisfaction of said bonds upon such terms as may be agreed upon the sterling bonds to be issued as hereinbefore provided for so as to retire all the said bonds now payable in currency of the United States at the Southwestern Railroad Bank; and whereas,

303 in order to secure the true and punctual payment of the said several bonds, according to the tenor and effect thereof, the South Carolina Railroad Company hath resolved to pledge and mortgage to the parties of the second part "all the real estate, wherever situate, which is now owned or may hereafter be acquired by the said company, and all the rolling stock and other personal property used or necessary in the operating of said railway:"

Now, this indenture witnesseth that the said South Carolina Railroad Company, for and in consideration of the premises and of the sum of five dollars to the said South Carolina Railroad Company in hand well and truly paid by the parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, assigned, transferred, and set over, and by these presents doth grant, bargain and sell, assign, transfer, and set over, to the parties of the second part—

"All the lands, tenements, and hereditaments to the said South Carolina Railroad Company now belonging or which said company may hereafter acquire, and all and singular the rights, privileges, and franchises now possessed by the said company or to which the said company may hereafter become entitled, and all railways, tracks, sidings, bridges, culverts, viaducts, and water tanks, and all engines, tenders, cars, tools, materials, machinery, and all other personal property of the said South Carolina Railroad Company necessary to and employed in the working of the said road:"

To have and to hold all and singular the said property, real and personal, and all the rights, privileges, and franchises thereto or to the said company appertaining unto the said parties of the second part, their heirs, successors, and assigns—

In trust, nevertheless, to and for the following uses, intents, and purposes—that is to say: To permit and suffer the South Carolina Railroad Company to use and employ all the property, real and personal, and all the rights, privileges, and franchises herein

304 conveyed or intended so to be, and to receive all rents, incomes, profits, and emoluments accruing therefrom, and to disburse the same so long as the said company shall well and truly pay the principal and interest of the said bonds according to the tenor and effect thereof.

But if the South Carolina Railroad Company shall at any time make default in the payment of said bonds according to the tenor and effect thereof it shall and may be lawful for said trustees, upon the request in writing of the person or persons holding the majority in value of the said bonds, and after three months' notice given in writing to the said South Carolina Railroad Company of their in-

tention so to do, to enter upon and take possession of all the estate and property, real and personal, of the South Carolina Railroad Company hereinbefore conveyed or intended so to be and sell at public auction the same or so much thereof as may be necessary to pay the amount due and unpaid on all the said bonds, due regard being had to the interest of the party of the first part and due notice of the time and place of sale and of the specific property to be sold being first given by public advertisement in at least two of the daily papers of the city of Charleston for the space of three months, and execute to the purchaser or purchasers thereof good and valid transfers, assignments, and conveyances in fee simple for the same, which shall be a bar against the said South Carolina Railroad Company, their successors and assigns, and all persons whomsoever claiming under it or them of all right, interest, or claim in and to all and singular the said property, real and personal, so sold and conveyed or any part thereof; and the said parties of the second part, after deducting from the proceeds of said sales the costs and expenses thereof and of managing said property, shall apply the proceeds ratably and without preference to the payment of the amounts due and unpaid on said bonds, and the residue of the property, if any, remaining after the payment and satisfaction of the amounts due on said bonds the said parties of the second part shall restore and deliver to the party of the first part:

305 Provided always, nevertheless, and it is so agreed by and between the parties to these presents, that upon payment and satisfaction in full of the principal and interest of the bonds secured by this deed all the estate, right, power, and authority of the said parties of the second part in or to the premises hereinbefore described shall cease and determine, and all the said property, real and personal, hereby conveyed shall, without other or further acknowledgment, reconveyance, act, or deed, revert to and remain in the said party of the first part, freed and discharged from all the trusts herein created, and that nothing in these presents contained shall be taken or construed as intended to grant, bargain, sell, assign, transfer, or convey, or as granting, bargaining, selling, assigning, transferring, or conveying, to the said parties of the second part or their heirs, successors, or assigns all or any of the above-described mortgaged premises and their appurtenances, rights, and franchises for any other use or purpose whatever than as in pledge or mortgage for the payment by the said party of the first part of its bonds issued or to be issued as aforesaid.

It is further agreed by and between the parties to these presents that if the holder of any of the bonds issued as hereinbefore provided for shall desire to deliver up said bonds to be cancelled and to receive in substitution therefor the bonds of the South Carolina Railroad Company, payable in lawful money of the United States, with interest not exceeding seven per cent. per annum, it shall and may be lawful for the said South Carolina Railroad Company to effect such substitution upon terms to be agreed upon by and between said company and the bondholders desiring such substitution, and the bonds issued in substitution for the sterling bonds delivered

up shall have all the benefit and protection of this deed to the same extent and in like manner as the sterling bonds would have had if no substitution had been made, and such substituted bond or bonds may be made payable at more distant dates (but not earlier) than the bond or bonds for which they have been substituted, and
306 may be payable also in different instalments, provided the payments of principal shall not be accelerated: And provided further, that where any substitution is made the bond or bonds substituted shall specify on the face thereof the number, date, and amount of the original bond or bonds; and it is further agreed that substituted bonds may be again substituted by others under the same regulations and restrictions; and it is further agreed that in no case of substitution shall interest be added to principal, so that the principal of the debt secured by this deed shall in no case whatever be increased.

And it is further agreed by and between the parties hereto that if at any time during the existence of this deed it shall be deemed advisable by the said South Carolina Railroad Company to sell any of the lands now owned and used by them for stations, depots, or otherwise it shall and may be lawful for the said South Carolina Railroad Company, by and with the consent of the majority of said trustees expressed in writing, to sell such real estate and make good and valid titles therefor, the proceeds of such sales to be invested in other real estate or other good and sufficient securities to be conveyed to and held by the said trustees, subject to all the trusts, purposes, and objects of this deed.

And the said South Carolina Railroad Company, for and in consideration of the premises, doth, for itself, its successors and assigns, covenant and agree to and with the parties of the second part, their successors and assigns, from time to time and at all times hereafter to make, do, and execute all such other and further lawful and reasonable conveyances and assurances for the better and more perfect and absolute granting, conveying, and assuring the property, real and personal, hereinbefore conveyed and assured or intended so to be to the said parties of the second part, their heirs, successors, and assigns, as by them or their counsel learned in the law shall be requested, and especially for the conveying and assuring to the said parties of the second part, their successors and assigns, by apt and proper deeds and conveyances, any and all property, real and
307 personal, that may be acquired by the said South Carolina Railroad Company after the execution of this deed.

And it is further mutually agreed that in case of the death, resignation, or disability from any cause whatever of all or any parties of the second part, or the removal from the State of any of the trustees who at the time of their appointment are residents of the State, the party of the first part may and shall have the power to appoint and substitute other fit and suitable persons in the room and stead of such of the said parties of the second part as may die, resign, remove from the State, or become disqualified; and, if the party of the first part shall not make appointment to supply the vacancy within ninety days after the same hath occurred, the holders of a

majority of the said bonds may apply to the courts of the State of South Carolina having jurisdiction for that purpose to appoint one or more trustees to supply such place or places, and thereupon in either case such new trustee shall become invested, for the purposes aforesaid, with all the rights, interests, and estates hereby conveyed to or vested in the said parties of the second part, without any further assurance or conveyance for the same; but, if it shall be necessary, both or either of the said parties hereto shall execute any necessary releases or conveyances for that purpose.

And, lastly, it is agreed by and between the parties hereto that this deed shall not be entered of record or be valid and binding upon any of the parties thereto unless the holders of four-fifths of the bonds now outstanding and to be secured by this deed assent to the provisions thereof and agree to deliver up the bonds they now hold and receive in lieu thereof the bonds to be issued in accordance with this deed and to be secured thereby.

308 In witness whereof the South Carolina Railroad Company hath hereto affixed its corporate seal, at Charleston, in the State of South Carolina, and the said Henry Gourdin, H. Pinckney Walker, and James M. Calder have hereto set their hands and seals, the day and year first above written.

Corporate Seal.

W. J. MAGRATH, *President.*
J. R. EMERY, *Secretary.*

Signed, sealed, and delivered in presence of—

F. M. BURDELL.
J. B. LANCE.

H. GOURDIN. [L. S.]

Witnesses to signature of H. Gourdin:

A. H. GIRARD.
HENRY W. FROST.

JAMES M. CALDER. [L. S.]

Witnesses to signature of James M. Calder:

CHAS. H. DENNELL,
Clerk U. S. Consulate, Liverpool.
JOHN COLVIN,
Clerk U. S. Consulate, Liverpool.

H. PINCKNEY WALKER, [L. S.]
H. M. Consul.

Signed, sealed, and delivered in the presence of (as far as regards the signature of H. Pinckney Walker)—

JOSHUA NUNN, *Deputy Consul,*
F. W. FERIGOUL, *Clerk,*
Consulate U. S. A., London.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Personally appeared John B. Lance, who deposes that he saw W. J. Magrath, president of the South Carolina Railroad Company, and Jonathan R. Emery, secretary, sign the within-written deed
309 and affix the seal of the corporation thereto, and that he, with Francis M. Burdell, witnessed the due execution thereof.

J. B. LANCE.

Sworn to before me this 10th August, A. D. 1869.
[NOTARIAL SEAL.] G. W. DINGLE,
Magistrate and Notary Public.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Personally appeared Henry W. Frost, who deposes that he saw H. Gourdin sign, seal, and as his act and deed deliver within-written deed, and that he, with A. H. Girard, witnessed the due execution of the same.

H. W. FROST.

Sworn to before me this 10th August, A. D. 1869.
[NOTARIAL SEAL.] G. W. DINGLE,
Magistrate and Notary Public.

CONSULATE OF THE UNITED STATES OF AMERICA, LIVERPOOL.

I, Henry Wilding, vice-consul of the United States of America for Liverpool and the dependencies thereof, do hereby make known and certify to all whom it may concern that on the day of the date hereof before me personally appeared and came James M. Calder, to me known to be the person described in and who executed the within indenture or instrument of writing, and did then and there acknowledge the same to be his free and voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Liverpool aforesaid, this 13th day
Official Seal. of October, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-third year of the Independence of the said United States of America.

H'Y WILDING,
U. S. Vice-Consul and Acting Consul, Liverpool.

310 CONSULATE OF THE UNITED STATES OF AMERICA, LONDON.

I, Freeman H. Morse, consul of the United States of America for London and the dependencies thereof, do hereby make known and certify to all whom it may concern that on the day of the date hereof before me personally appeared and came H. Pinckney Walker, Her Britannic Majesty's consul, resident in Charleston, South Carolina, to me known to be the person described in and who executed the within indenture or instrument of writing, and did then and there acknowledge the same to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at London aforesaid, this the 12th day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-third year of the Independence of the said United States of America.

Official Seal.

F. H. MORSE, *Consul.*

311 And on 10th day of August came into court the complainant, by his solicitor, H. E. Young, and filed the following exceptions to the report of J. E. Hagood, special master, which report is in the words and tenor following:

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court.

H. T. COGHLAN
vs.
THE SO. CA. R'D CO. *et al.*, Defendants.

The complainant excepts to the report of J. E. Hagood, special master, filed August 1st, 1887—

1st. In that it reports the amount due under the principles of Judge Bond's decree to be ten thousand six hundred twenty pounds sterling.

2nd. In that it reports that on the 28th Feb'y, 1883, there was due £8,625 and twenty one-hundredths, whereas under the principles of the said decree he should have found to be due, besides the above amounts, respectively the sum nine hundred pounds sterling, the amount due on the unpaid coupons, with interest thereon; and, furthermore, whereas while under the decree the interest on

312 the principal of the bond should have been calculated at 5%, still the interest on interest should have been calculated at the rate of 7% per annum.

3rd. In that he reports that on the 28th Feb'y, 1883, the defendants' att'ys, Mitchell & Smith, tendered to the complainant the sum of $44,600, whereas there was no valid or legal tender.

4th. In that he reports that the pound sterling in the above matter should be taken as worth $4.44 and four-ninths, whereas he should have reported that the value of pound sterling should be whatever it costs at the current rate of exchange on the day of payment to buy a demand bill of exchange on London for the amount then due.

Aug. 10, 1887.

H. E. YOUNG,
Compl't's Sol'r.

313 [Endorsed:] U. S. circuit court for So. Ca. Coghlan *vs.* So. Ca. R. R. Co. Exceptions to report of Special Master Hagood. Filed Aug. 10, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C. H. E. Young, for complainant.

314 And on 31st day of August, 1887, came into court H. E. Young, complainant's solicitor, and filed the following order of substitution, which order is in the words and tenor following:

COGHLAN
vs.
So. CA. R. R. R.

CHARLESTON, S. C., 31 *Aug.*, 1887.

DEAR SIR: Please substitute my name as att'y for pl'ff in this case.

Resp'ct'ly, H. E. YOUNG.

To J. E. Hagood, Esq., cl'k U. S. c't court, So. Ca. dist.

We consent to the substitution.

INGLESBY & MILLER.

315 [Endorsed:] United States of America, district of South Carolina. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* H. E. Young substituted as att'y for plaintiff in place of Inglesby & Miller. Filed Aug. 31, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

316 And on 12th day of September, 1887, came into court Judge Charles H. Simonton — filed his opinion and an order of reference, which opinion and order of reference is in the words and tenor following:

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

H. P. COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD CO. *et al.*

SIMONTON, *J.:*

This cause was heard in this court on 15th December, 1883, and a decree was rendered therein.

After full hearing and argument of counsel the measure of recovery to which the plaintiff was entitled was fixed. The mode adopted by the court was this: On each bond for £250 and coupons attached held by plaintiff he was held to be entitled to recover the sum of £300, with interest thereon from 1 July, 1868, at the rate of 5 % per annum, payable semi-annually, *so* if the said
317 bond had on that day been exchanged for a new bond for £300 bearing date 1 July, 1868.

For each £500 and part-due coupons attached thereto the plaintiff was held entitled to recover £600, with interest thereon at 5 % per annum, payable semi-annually, from 1 July, 1868, as if he had received a bond dated that day in that amount with that interest, all sums paid to plaintiff on his bond for interest by the defendant or the receiver to be credited.

A reference to Hagood, special master, was ordered to take the account on the principles above stated. The case now comes up on the report of the special master and exceptions by plaintiff thereto.

The special master has reported the amount due up to 1 July, 1887. In his report he charges defendant with the principal, with interest thereon at the rate of five per cent. per annum, and, calculating the interest as due semi-annually, he has allowed interest on the semi-annual interest at the same rate—five (5) per cent. per annum. No exception has been taken to the calculation of interest. Was the master right in allowing interest on the interest at five (5)
per cent., or should he have allowed seven (7) per cent.,
318 the rate allowed in South Carolina?

In an ordinary money bond unpaid instalments of interest draw interest at the same rate as the bond. Principal and interest are inseparable. The latter flows from the former as its incident. The one is the substance, the other its shadow. Both are governed by the same rule as to rate. When, however, the mode of paying interest is by coupons which can be severed from the bond the rule may be different. It will depend upon the form and nature of the contract expressed in the coupon. The coupon is in itself an entirely separate and distinct contract from the bond. It can be severed from it. It can be transferred to a third person who never sees or controls the bond. If, then, the coupon be made payable at a place and on a date certain, and if, according to the law of such place, all contracts bear interest at a rate different from the rate of interest expressed in the bond, and if the coupon be silent on this point, then the local rate of interest can be charged and recovered on such coupon (Miller *vs.* Tiffany, 1 Wall., 310; Goddard *vs.* Foster, 17
Wall., 143; 2 Parsons on Contracts, 582–592; Hunt *vs.* Hall,
319 37 Ala., 702). The report of the special master does not state where the bonds were made, nor where they are payable, nor where the coupons are made payable. The last is the essential subject of inquiry.

It is ordered that the report be recommitted to J. E. Hagood, Esqr., special master, and that he inquire if the coupons on the bonds of 1 July, 1868, are payable at any particular place, and, if so, at what place, and, if practicable, that he file with the report made on this subject a copy of such coupon. If this be not practicable, that he report the substance of said coupons. Let the report be filed on or before rule's day in November next.

320 [Endorsed:] United States of America, district of South Carolina. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Opinion of C. H. Simonton, judge, and reference to J. E. Hagood, special master. Filed 12 Sept., 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

321 And on the 6th October, 1887, came into court J. E. Hagood, Esqr., special master, and filed his report, which report is in the words and tenor following:

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants. } In Equity.

To the honorable the judges of the said court:

This case was recommitted to me as special master to inquire and report if the coupons on the bonds of July 1, 1868, are payable at any particular place; and, if so, "at what place," and, if practicable, to file with the report made on this subject a copy of such coupon, &c.

I beg leave most respectfully to report that the bonds and coupons issued by the South Carolina Railroad Company under the deed of July 1, 1868, and which is the subject of dispute in this case,
322 are made payable at the banking-house of Messrs. Dent, Palmer & Company, in the city of London, England, with interest thereon at the rate of five per cent. per annum, payable semi-annually on the first days of January and July of each year, and I herewith file as a part of this report a copy of one of the bonds and one coupon attached to the bond issued under this deed:

A.
£100 St'g,
Five per cent. loan.

No. 80.
£100 St'g,
Five per cent. loan.

UNITED STATES OF AMERICA, *The State of South Carolina.*

The South Carolina Railroad Company promises to pay to bearer one hundred pounds sterling, redeemable on the first day of January, anno Domini one thousand eight hundred and eighty-two, and not before, without the consent of the holder of this certificate, with interest thereon at the rate of five per cent. per annum from the first day of January, anno Domini one thousand eight hundred and sixty-eight, the said interest to be paid semi-annually, on the first days of January and July, on presenting the proper coupons for the same at the banking-house of Messrs. Dent, Palmer & Co., London, England, where the principal will also be redeemed on the surrender of this certificate.

323 In witness whereof the said company has caused its corporate seal to be hereon impressed at Charleston, So. Ca., this first day of January, anno Domini one thousand eight hundred and sixty-eight.

W. J. MAGRATH, *President.*
J. R. EMERY, *Secretary.*

This bond is issued in conformity to the mortgage deed executed by the South Carolina Railroad Company to us on the — day of

—— anno Domini one thousand eight hundred and sixty, and is secured thereby.

H. GOURDIN,
[SEAL.] H. P. WALKER, *H. M. Consul.*
Trustees.

[Written on the margin:] Secured by a mortgage of the entire property of the company.

166.

COUPON.

South Carolina Railroad Company.

£10 stg.

Warrant No. 1.

Two pounds ten shillings st'g. being six months' interest on bond No. 80, for £100, payable July 1st, 1868, at the banking-house of Messrs. Dent, Palmer & Co., in the city of London, Eng.

J. R. EMERY, *Sec'y.*

I beg leave further to report that the date of my former report made in this cause was on the 5th day of May, 1882; the tender was made on the 28th Feb'y, 1883, after report was made.

All of which is respectfully submitted.

Oct. 6, 1887.

J. E. HAGOOD,
Special Master.

324 [Endorsed:] United States of America, district of South Carolina, fourth circuit. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Report of J. E. Hagood, special master. Filed 6 day of October, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

325 And on the 14th day of October, 1887, came into court Judge Charles H. Simonton — filed his opinion; which opinion was in the words and tenor following:

THE UNITED STATES OF AMERICA, }
District of South Carolina, Fourth Circuit. }

H. T. COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*

The case comes up upon the report of Special Master Hagood, filed August 1, 1887, and the supplemental report filed 6 day of October, 1887.

A brief statement is necessary to understand the question now made.

The plaintiff is the holder of certain sterling bonds of the Louisville, Cincinnati and Charleston R. R'd Co., guaranteed by the State of South Carolina and secured by a statutory lien. This corporation afterward became the South Carolina Railroad Company. This class of bonds matured in 1866, and various plans of arranging the debt were suggested, adopted, and abandoned. Finally the
326 South Carolina Railroad Company offered to settle those past-due sterling bonds by issuing in exchange for them first-mortgage bonds of this property, so that for each sterling bond of the amount of £250 and the interest due thereon there should be exchanged a first-mortgage bond of £300, and for each sterling guaranteed bond for £500 and interest due thereon there should be exchanged a £600 first-mortgage bond. These new bonds are dated July 1, 1868, and have coupons attached providing for the payment of interest semi-annually at the rate of 5% per annum. The new bonds exchanged for such of the sterling guaranteed bonds as were payable in London were also made payable in London. The mortgage securing the new bonds provided that if any of them or if any part of the interest on them be paid in the currency of the United States the £ should be rated at $4.44⅔. The plaintiff rejected all offers for the exchange of his bonds, which were guaranteed sterling bonds, payable in London; but he consented to receive, and, in fact, did receive, payment of semi-annual instalments of interest precisely as if he had made the exchange—that is to say, he received on each £250 bond interest as if it were a £300 bond, and on each £500
327 bond he received interest as if it were a £600 bond. Finally he pressed for payment of his bonds in full. To this end he began a suit for the enforcement of his lien in the State court. Before his action, however, proceedings had been instituted by certain mortgage creditors of the South Carolina Railroad Company in this court, seeking the appointment of a receiver and the sale of the property. These proceedings had resulted in the appointment of the receiver and the said sale. The money was here. The cause of the plaintiff was removed from the State court into this court, and a reference was ordered as to the facts. The report was filed.

The cause came up on exceptions to the report and was heard. The decision was filed 15 Dec., 1883. It fixed the principles by which the recovery of the plaintiff was to be measured, and treated him as if he had exchanged his bonds for the first-mortgage bonds of July 1, 1868—that is to say, for each $250 bond and interest he was to receive £300 with interest semi-annually from 1 July, 1868, at 5% per annum, and for each £500 and interest he was to receive £600 with like interest from the same date. The instalments of interest paid to plaintiff were to be credited on the debt. The
328 special master was instructed to take the account on these principles. The bonds were payable in London. Evidently the court treated the matter as if the old bonds had been exchanged for the first-mortgage bond. In these the £ was rated at $4.44⅔; so the rate of interest and of the £ were concluded by this decree also.

It seems, however, that after the first report of the special master had been prepared and filed, but before a hearing was had thereon, to wit, on 28 February, 1883, the suit then pending and no amount having been reported as due, the defendant produced — in legal-tender notes, and made an offer of them to the plaintiff in full settlement of his claim and the costs. The amount of money thus tendered was $44,600. The letter in which the offer was made stated that this was in full. I do not understand that this was anything more than an expression of the opinion of defendant, and that it was not a condition for the acceptance of it. The offer was declined. The special master has filed his report under the order of reference Dec. 15, 1883, and a further report under the order filed 12 Sept., 1887. He has reported the amount due, with interest calculated at the
329 rate of 5% per annum, as well on the principal as on the past-due instalments of interest, all payments having been deducted as provided in the order of this court.

On the day of the offer by defendant of $44,600 there was due £8,625. On the 1st July, 1887, when the report was made up, there was due £10,620.

The value of the £ is fixed at $4.44⅘, the rate stated in the mortgage of 1 July, 1868.

The previous decrees in this case have settled every question at issue except one, the effect of the offer made in February, 1883. To what extent can it avail the defendant?

Where a claim is made on a money demand and the debtor is prepared to admit a part of the claim, he can tender to the claimant so much as he admits is due. If the tender be declined and suit be instituted the plaintiff must establish that more was due than the sum tendered, else he cannot recover interest or costs accruing after the tender. The tender must be to the proper person, in legal tender, must be absolute and not clogged with con-
330 ditions, and must be continuous—that is to say, the person tendering must always be ready to complete the tender. (Fishburne *vs.* Sanders, 1 N. & McC., 243; Black *vs.* Rose, 14 So. Ca., 278; 5th Robinson's Practice, 947, 948; Bissell *vs.* Heyward, 96 U. S., 587.) The acceptance on the part of him who is to receive is necessary to the full discharge of the party tendering. If this be withheld, the latter, having done all that is in his power, need only keep himself ready to carry out the tender and he will get the benefit of it. (5 Robinson's Practice, 947; Dobie *vs.* Larkin, 32 Eng. L. & Eq. R., 501.)

But when an action has already been commenced and is pending, if the defendant be disposed to admit the demand in part, it is not only necessary that they should offer to pay the plaintiff the amount admitted, but he should go farther, and must either pay the sum admitted into court or at least offer to submit to a judgment for such sum. This is the rule in the common-law court. A plea of tender must be accompanied by an offer to pay the amount into court. (1 Tidd's Practice, 540; Civil Code of Procedure of So. Ca., sect. 265, subd. 5; 5 Robinson's Practice, 949, 950.) And it commends itself to this court. The reason is clear. A tender before suit,
331 however anxious the party be to pay what is just, is neces-

sarily incomplete if not accepted. There is no way of compelling the acceptance. "An offer to pay pending a suit can be made complete by the action of the court." It is not *ex parte*, but done by order of the court, which represents both parties and whose orders bind the plaintiff as well as the defendant. The money paid over is for the plaintiff, and the possession of it cannot be resumed by the debtor. In the further prosecution of the case this much is stricken from the record whether the plaintiff takes out the money or not (Black *vs.* Rose, 14 So. Ca., 248), or, as is stated in Boyden *vs.* Moore, 5 Mass., 367, "the bringing of money into court is a practice adopted to relieve a defendant against an unexpected suit for money which he is willing to pay, but which he has not tendered to the plaintiff before the commencement of the suit. After the defendant had brought in as much money as he thinks proper and the plaintiff has refused to receive it in satisfaction the defendant is entitled to have the same considered as payment made on the day on which it was brought, and he is answerable only for further damages."

332 The offer of the defendant made in February, 1883, not having been followed by an offer to pay the money into court, is incomplete and cannot now avail the defendant.

Let decree be entered for the plaintiff, the amount due to him being calculated to 1 July, 1887—that is to say, as reported by the master, ten thousand six hundred and twenty pounds sterling (£10,620).

Counsel will prepare the decretal order on the principles herein stated.

CHARLES H. SIMONTON,
U. S. Judge.

14 Oct., 1887.

333 [Endorsed:] United States of America, district of South Carolina, fourth circuit. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Opinion of Judge Simonton. Filed 14 day of October, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

334 And on the 2nd day of November, 1887, came into court Judge Charles H. Simonton and filed his final decree, which decree is in the words and tenor following:

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.

April Term, 1887.
Final Decree.

This cause comes on to be heard upon the report of Hagood, special master, filed 1 August, 1887, and the exceptions thereto, and on the supplemental report filed by him 6 October, 1887.

After hearing the same and the argument of counsel thereon and due consideration thereof it is ordered, adjudged, and decreed that the only parties now before the court having an interest in this cause are the plaintiffs and the defendants The South Carolina Rail-
road Company and H. Pinckney Walker and J. M. Calder,
335 trustees; that the defendants John Hanckel, Robert Adger, Benjamin F. Huger, David Mordecai, J. Randolph Mordecai, George Parsons, Leslie Chase, J. C. Maybin, Charles Macbeth, The People's Savings Institution, C. E. Bryan, George Bullware, and John Clarence Cochran, though necessary and proper parties at the time the bill was filed, have ceased to have any interest in the case. The bill is dismissed as to them without costs.

(2.) That the defendant The South Carolina Railroad Company is indebted to and that it do pay to the complainant the sum of ten thousand seven hundred and ninety-eight pounds eighteen shillings and nine pence (£10,798 18 9), being the principal and interest on the bonds held by him calculated according to the principles of the master's report, which in this respect is confirmed, and rating the £ at four dollars forty-four $\frac{4}{9}$ cents ($4.44\frac{4}{9}$) the said amount in sterling is the equivalent of forty-seven thousand nine hundred and ninety-five $\frac{28}{100}$ ($47,995.28), interest to be hereafter calculated on said sum from the date of this decree at the rate of seven (7) per cent. per annum.

It is further ordered, adjudged, and decreed that in case
336 the defendant The South Carolina Railroad Company do not pay or cause to be paid unto the complainant the said sum of money as aforesaid, with the costs of these proceedings and of the proceedings in the State court anterior to and up to the removal thereof into this court, properly taxed, and the accruing interest on said sum, on or before the expiration of sixty days from the date of this decree, in that event all and singular the defendants and any and every person claiming by, through, or under the said defendant, the said company, shall be barred and foreclosed of all right and equity of redemption as to complainant in and to the property set forth, described, and mortgaged in the mortgage executed by the South Carolina Railroad Company to Henry Gourdin, H. P. Walker, and J. M. Calder, trustees, dated 1 July, 1868, to the security whereof it has heretofore been decided in this case that the bonds held by complainant are entitled.

It is further ordered that in said event all the property and rights of the said property included and mentioned in the said mortgage
of the said South Carolina Railroad Company and situate,
337 lying, and being in the State of South Carolina, with all the railway tracks, sidings, bridges, and viaducts thereto belonging, and all lands and rights of way thereto incident, and all lands belonging to the said company and used by it for wood and water stations, depots, warehouses, offices, machine shops, and engine-houses, and all locomotives, tenders, cars, stationery engines, tools, materials, machinery, and all other personal property of the said South Carolina Railroad Company necessary to and employed in the working of the said road, and all the privileges and franchises to the said

company belonging shall be sold for cash as an entirety and in one parcel, at public auction, at the usual place for masters' sales in the city of Charleston, in the county of Charleston and State of South Carolina, by the marshal of this court.

And the said marshal shall give three months' previous notice of the hour and place and terms of such sale by publishing notices thereof in the News and Courier, of the city of Charleston, and the Journal of Commerce, of the city of New York, once in each week during the said three months and on the day of sale.

338 And it is further ordered, adjudged, and decreed that the said marshal shall report his proceeding at the sale of the premises hereinbefore ordered to be sold by him, with the amount of the highest bidder and the name or names of the person or persons bidding the same, and upon the confirmation of such report and the compliance of the bidder or bidders with the terms of sale the said marshal shall convey to such buyer or buyers by good and sufficient deed said railroad and its premises, as heretofore described.

It is further ordered that the said South Carolina Railroad Company and all and singular the other defendants to this suit and all and singular the person or persons (if any) who have bought pending this litigation be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said premises so mortgaged to the said H. P. Walker and other trustees, as aforesaid.

It is further ordered, adjudged, and decreed that at the sale of the said premises the said plaintiff shall have leave to bid upon the said property. All other bidders shall pay to the marshal at the close of the bidding the amount of their bid in cash up to one hun-

339 dred thousand dollars, and the balance of the purchase-money shall be paid at or before the confirmation of said sale by the court.

If the plaintiff be the purchaser he shall pay into the hands of the marshal at the close of the bidding so much of his bid as shall exceed the amount of his debt settled by this decree, and shall also pay the costs of these proceedings, and if his bid exceed the sum of one hundred thousand dollars he shall pay to the marshal in cash the difference between one hundred thousand dollars and the amount of his debt aforesaid, and the remainder shall be paid on or before the confirmation of the sale by this court.

And it is further ordered that the marshal do pay from the proceeds of sale to the plaintiff or his attorney the costs due to the plaintiff, whether for the proceedings in this court or the State court in this cause, and then the debt due to the plaintiff, and then all other costs that have accrued in this cause, and the remainder be held subject to the order of this court. The plaintiff, upon the payment to him of the said moneys, will surrender his bonds to the marshal to be cancelled by him and held subject to the further order of this court.

340 Any party hereto has leave to apply at the foot of this decree for any further order necessary to give effect thereto.

The costs of these proceedings and of the proceedings in the State court, anterior and up to the removal thereof into this court, properly

taxed, to be paid by the defendant the South Carolina Railroad Company.

The complainant having prayed for an appeal from the above decree, the same is hereby allowed, and the supersedeas bond is fixed at two hundred and fifty dollars.

CHARLES H. SIMONTON,
U. S. Judge.

2 Nov., 1887.

341 [Endorsed:] United States of America, district of South Carolina, fourth circuit. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Final decree and allowance of an appeal. Filed 2 day of November, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

342 And on the 2nd day of November, 1887, came into court the complainant, Henry Thomas Coghlan, and filed the following bond, which bond is in the words and tenor following:

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court. In Equity.

HENRY THOMAS COGHLAN, Plaintiff,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY *et al.*, Defendants.
April Term, 1887.

Know all men by these presents that I, David Roberts, am held and firmly bound unto the South Carolina Railroad Company *et al.* in the full and just sum of two hundred and fifty dollars, to be paid to the said South Carolina Railroad Company *et al.*, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents. Sealed
343 with my seal and dated this second day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a circuit court of the United States for the district of South Carolina, in a suit depending in said court between Henry Thomas Coghlan, plaintiff, and The South Carolina Railroad Company *et al.*, defendants, — was rendered against the said Henry Thomas Coghlan, and the said Henry Thomas Coghlan having obtained an allowance of an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said South Carolina Railroad Company *et al.*, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said Henry Thomas Coghlan shall prosecute his appeal to effect and an

swer all damages and costs if he fail to make his plea good, the above obligation to be void; else to remain in full force and virtue.

DAVID ROBERTS. [SEAL.]

Signed, sealed, and delivered in the presence of—
KIRBY S. TUPPER.

344 Approved.
CHARLES H. SIMONTON,
U. S. Judge.

2 Nov., 1887.

345 [Endorsed:] United States of America, district of South Carolina, fourth circuit. Henry Thomas Coghlan *vs.* The South Carolina Railroad Company *et al.* Appeal bond. Filed 2 day of November, 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

346 *Assignments of Error.*

In the Supreme Court of the United States.

HENRY THOMAS COGHLAN, Appellant,
vs.
THE SOUTH CAROLINA RAILROAD COMPANY, Appellees.

The plaintiff assigns for error in the decrees filed 15th day of December, A. D. 1883, and 2nd day of November, A. D. 1887, the following matters:

I. That the court erred in not holding that upon all the bonds held by the plaintiff and all past-due coupons thereon the plaintiff was entitled to seven per cent. interest from the day each bond and coupon fell due to the day of any payments made thereon by the said railroad company or the receiver, and that such payments should then have been deducted from the amounts the due on each bond, and the interest thereafter should have been calculated on the balance then found due at the rate of seven per cent. per
347 annum, payable semi-annually, and so forth.

II. That the court erred, even if the decree is correct in other respects, in not ordering the interest or coupons due 1st January, 1867 (£150), 1st July, 1867 (£150), and 1st January, 1868 (£150), which were not capitalized, to be paid with interest from those respective dates to the date of the decree of 2nd November, 1887.

III. That the court further erred in not holding that even if the receipt by the plaintiff for interest paid by the South Carolina Railroad Company and its receiver estops the plaintiff from restating the account between the defendant company and himself, still the plaintiff is entitled to seven per cent. on the debt due to him from the date of such last payment.

IV. That the court erred in not holding that the plaintiff is entitled to the lien of the statutory mortgage to the State of South

Carolina, which is prior to the mortgage made by the said railroad company to Gourdin, Walker, and Calder.

V. That the court erred in not holding that the plaintiff is entitled to have the pound sterling calculated at whatever rate it will require to buy a sight draft on London on the day of the payment of the debt due to him, or at least at the day judgment in his
348 favor is rendered.

VI. That the court erred in not decreeing that the plaintiff is entitled to the sum of ninety-four thousand one hundred and thirteen $\frac{9}{100}$ dollars ($94,113.09).

The plaintiff prays a modification of the decree on the above grounds, so far as error therein is assigned.

H. E. YOUNG,
Compl't's Solicitor.

349 [Endorsed:] In the Supreme Court of the United States. Henry Thomas Coghlan, appellant, *vs.* The South Carolina Railroad Company, appellees. Assignment of errors. Filed 2 Nov., 1887. J. E. Hagood, C. C. C. U. S., dist. S. C.

350 UNITED STATES OF AMERICA, }
District of South Carolina. Fourth Circuit. }

I, J. E. Hagood, clerk of said court, do hereby certify that *that* the foregoing 335 pages is a true and correct copy of all the records and proceedings in the case of Henry Thomas Coghlan, complainant, against The South Carolina Railroad Company *et al.*, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Seal U. S. Circuit Court, District of So. Carolina.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., this the twelfth day of March, A. D. 1888.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: South Carolina C. C. U. S. No. 352. Henry Thomas Coghlan, appellant, *vs.* The South Carolina Railroad Company *et al.* Filed April 12, 1888.

Office Supreme Court U. S.
FILED,
APR 23 1891
JAMES H. McKENNEY

UNITED STATES OF AMERICA.

SUPREME COURT.

HENRY THOMAS COGHLAN, APPELLANT,

vs.

THE SOUTH CAROLINA RAILROAD CO., ET AL.

ON BEHALF OF THE APPELLANT.

1

FACTS.

The Cincinnati and Charleston Railroad Company was incorporated by South Carolina 19 December, 1835, (8 Stat. 409,) to build a railroad from Charleston to Cincinnati. Its name was changed to the Louisville, Cincinnati and Charleston Railroad Company, by Act 21st December, 1836. (8 Stat., 96.) 2

By Act of 20th Dec. 1837, (6 Stat. 571,) amended 19th December, 1838, (6 Stat. 604,) the State authorized this railroad company (the L. C. & C. Railroad Co.) to issue its bonds to an amount not exceeding $2,000,000 and redeemable on or before 1st January, 1866, with interest at 5 per cent. per annum. A part of these bonds and the interest were to be paid in London, and were expressed in pounds sterling.

South Carolina guaranteed the payment of these bonds, principal and interest, and took for its security a statutory 3

mortgage of the "whole estate, property and funds within the State, which the said company may then possess or shall thereafter acquire * * in priority and preference of any other debt which the said company may then or at any other time own."

These bonds were duly issued.

A copy of one of them, with the State's guarantee, will
4 be found on pages 55 and 56 of the transcript.

The plaintiff bought in 1842 six of these bonds of £500 each and 12 of £250 each (Tr. p. 48,) in all £6,000.

The coupons were punctually paid till 1st July, 1862.

By Act 19th December, 1843, (11 Stat. 295,) the Louisville, Cincinnati and Charleston Railroad Company was united with the South Carolina Canal and Railroad Com-
5 pany, under the name of "The South Carolina Railroad Company."

This company was greatly injured by the late war, its tracks having been torn up and its rolling stock, &c., worn; and at its close was unable to meet its obligations.

It endeavored to arrange its debt by issuing new bonds with the like guarantee of the State. This failed, and it then sought to substitute first mortgage bonds in their stead. This first mortgage was, however, to secure many other debts besides the old issue—viz: some £170,000
6 more, and that without the guarantee of the State of South Carolina. Tr. pp. 119–123.

Coghlan, ignorant evidently of the changed value of the guarantee of the State, refused to accept any change, and held to his old bonds.

At that time, according to the railroad's present theory, there was due on the bonds he held seven coupons, and in addition six months interest after the bonds fell due—equivalent to eight coupons, (Tr. p. 73, Wilson's Testimony, 3rd Answer), which made an addition of £100 on every £500,
7 and £50 on every £250 bond. (Tr. l. c.) There was really eleven half year coupons due.

Then followed the correspondence on which the question of the rate of interest depends somewhat.

It is unquestioned that Coghlan received for several years on the £500 bonds £15 as half yearly dividends, and on the £250 bonds £7½ as like dividends, being, according to the railroad's present idea, 5 per cent. on £600 and £300 respectively; (Tr. p. 74 S. p. 187–188:) but according to Mr. Coghlan's idea, being 6 per cent. on the original amounts of 8
his bonds, viz.: six per cent. on £6,000, and not 5 per cent. on £7,200; and he held that the railroad company was "obliged to pay me 6 per cent. on account of their refusing to pay off the principal of the bonds when I applied for it." (Tr. p. 102, about bottom of page.)

Coghlan certainly had no knowledge or even ground to imagine that he was entitled to 7 per cent on over due amounts until informed of this by the receiver's solicitor, D. T. Corbin, in his letter of 12 March, 1880. (Tr. p. 98, answer to 2d interrogatory; p. 100 answer to 5th cross in- 9
terrogatory; p. 101 Corbin's letter of 12 March, 1880, s. p. 251.)

This want of knowledge was natural, as Mr. Coghlan was neither a "lawyer nor engaged in mercantile pursuits." (Tr. p. 99 answer to 2 cross interrogatory; p. 48, top of the page.)

This idea of the matter held by Mr. Coghlan is greatly strengthened by the acknowledged fact that instead of 8 half years interest being due on his bond, viz.: 7 coupons and one half year's interest, (which made up respectively 10
the imaginary £600 and £300, instead of the actual £500 and £250;) there were in fact 11 half years' interest due on his bonds, equal to 11 half yearly coupons.

(Tr. p. 68. Fisher, the receivers direct testimony; p 73, Wilson's, the Treasurer of the road, direct testimony; p 50 Coghlans testimony; pp 61, 62, Dent, Palmer & Co's., the railroad's agent in London, letter of 4th May, 1880.)

Thus the amount due Coghlan when the company resumed payments was with accumulated interest; not £7,200 but £7,650.

11

He says in his letter of 17th Jan., '76, to Palmer, the

company's agent in England, "these coupons they will ultimately, there is little doubt, have to pay in accordance with the law of the State with compound interest *as well as my bonds* which are long overdue."

Palmer's answer contains no reply to the above.

(Tr. p 106, Letters of Coghlan, 17 to 27 May, and letter of of Palmer 29th Jan. '76.)

12

Coghlan took care that his receipts of those so-called dividends should not prejudice any right he had.

On 23d April, '67, he had all his bonds protested for non-payment. (Tr. p 57.)

On 22nd March, '69, Dent, Palmer & Co., the railroad agents, wrote to Martin & Co, Coghlan's agents, that they are ready to pay interest on Coghlan's bonds.

13 On 24th March, '69, Martin & Co. send this letter to Coghlan.

On same day Coghlan evidently writes to Martin & Co., asking if "the receipts of the July 1868 *dividends* will commit me in any way." This letter is missing, but Martin & Co's. letter of 29th March, 1869, makes this clear.

On this day they write to Coghlan, "Messrs Dent, Palmer & Co. consider that the receipt of the July 1868 dividends will not commit you in any way."

On 31st March, 1869, Coghlan writes to Martin & Co:

14 "I should do nothing that would affect my protest of the old bonds; so if accepting the interest now offered would do so, don't apply for it, but otherwise I should of course be glad to have it."

To this on 31st March, 1869, Martin & Co. reply:

"Messrs Dent, Palmer & Co. do not think by receiving the *dividend* declared on the new bonds, you would affect your protest on the old ones," and suggest a reference to his solicitor.

On 5th April, 1869, Coghlan writes, "my solicitor ex-

15 presses himself as follows:

'I don't think the fact of your receiving a subsequent

dividend on your bonds will interfere with your rights to recover the overdue ones. You may at any time of such application, renew your demand for such outstanding claim."

On 7th April, 1869, Martin & Co. write, "we will receive your dividend and we quite agree with you that it cannot prejudice your claim in any way."

On 8th April, 1869, Coghlan authorizes Martin & Co. to apply "for the arrears of interest and bonds in the way 16
recommended by my solicitor."

The letter of the solicitor does not appear.

On 13th April, 1869, Martin & Co. write, they have received "£175.10, being ½ year's dividend on your S. C. Railway bonds."

Some letter of Coghlan is evidently lost here.

On 14th April, 1869, Martin & Co. write that "the £175.10 consist of 5 per cent., on your £6,000 bonds for ½ year and 1/5 of the interest which is due to you on the capitulated over-due interest. 17

"Taking this does not compromise or affect your position in the least, and the amount will be allowed you in any subsequent claim or arrangement you may make."

More than one letter are now evidently lost. The last letter in the correspondence is of 4th May, 1880, and from Dent, Palmer & Co., the company's agents in England. We give it in full: (Tr.. p. 61 and 62.)

"11 KING'S ARMS YARD, E. C., LONDON, *May 4th*, 1880.

"Messrs. Martin & Co., 68 Lombard street. 18

"DEAR SIRS: The letter of the book-keeper of the South Carolina R. R'd Co. enclosed in your letter of yesterday is entirely in error, as you are no doubt aware, Messrs. Baring Bros. Co. having paid the interest due July, 1878, and January & July, 1879. We return his letter. The statements that were made to you verbally yesterday were correct. We have paid no interest on any bonds for the coupons due January & July, 1867, and January, 1868. The holders of the first-mortgage bonds issued in 1871 received bonds and fractional cash when exchanging their new bonds. The 19
new bonds issued by us in 1867 with the State guarantee in

exchange for the old bonds were for £600 & £300 each respectively, and these were given for old bonds of £500 & £250 each respectively, the difference, 20 p'r cent., being the unpaid interest for the years 1863, 1864, 1865 & 1866. The principal of the 11 coupons we have referred to (803) the holders of the old bonds have no bonds for, and have never received, but interest they have received upon the 8 half
20 year's interest, and also upon the face of the bonds, which is endorsed upon the bonds. The holders of old bonds who surrendered them in exchange for first-mortgage bonds were treated in the same manner as if they had previously exchanged for the new bonds, thus getting also bonds including the 11 half year's interest, but without the State guarantee.

"We are, dear sirs, yours faithfully,

DENT, PALMER & CO.

"P. S.—The old bonds became due on the 1st January,
21 1866; hence there were no coupons on them after that date.

D., P. & CO."

Again, Coghlan's testimony, Tr., pp. 49–50:

"A. I have received through my bankers, Messrs. Martin & Co, from the said company, through its agents, Messrs. Dent, Palmer & Co., certain moneys on account of the aforesaid bonds since their maturity. The amount of such moneys, with the dates on which they were respectively paid, respectively appear endorsed upon the said bonds. I have
22 received such moneys under the distinct understanding with Messrs. Dent, Palmer & Co., the agents of the said defendant company, that the receipt of such moneys should not in any way prejudice any rights I might have for or in respect of the aforesaid bonds. Such understanding appears by the exhibits referred to in my answer to the 7th interrogatory. The circumstances attending the receipt and payment of the said moneys on account of the said bonds also fully appear by the aforesaid exhibits. The said exhibits, as hereinbefore appears, refer to the said moneys so received on
23 account. Those of the said exhibits which purport to be communications from me to my bankers, Messrs. Martin,

are copies of letters addressed by me to them on the respective dates which they purport to bear. The said copies were made by myself before sending the originals to Messrs. Martin, and are in every respect true and correct copies. I have been informed by the said Messrs. Martin that they have destroyed the originals of the said copies in accordance with the practice of their business, to destroy all correspondence after it has been in their hands for ten years." 24

And Martin's testimony, (Tr., pp. 52 and 53):

"A. My said firm have received, as bankers and agents of the plaintiff, from the defendant company, through its agents, Messrs. Dent, Palmer & Co, moneys on account of the aforesaid bonds since their maturity. The several amounts of such moneys, with their respective dates of payment, appear endorsed upon the said bonds. We received such moneys under the understanding that the receipt of such moneys should not in any way prejudice any of the 25
rights which the plaintiff might have for or in respect of the aforesaid bonds, as appears by the exhibits referred to in my answer to the 7th interrogatory. The understanding referred to was arrived at, at interviews held between Dent, Palmer & Co. at their office, 11 King's Arms Yard, in the city of London, and sometimes myself, sometimes some other member of my said firm, and sometimes William Pegler Sanigear, the managing clerk of my said firm. These interviews took place in the months of March and April, 1869, and principally in March. The said Messrs Dent, Palmer 26
& Co., or their representative, stated to me at such of the said interviews as were held with myself that the receipt of the above-mentioned moneys would not prejudice any rights which the plaintiff might have for or in respect of the aforesaid bonds, or to that effect. The said William Pegler Sanigear has died, but immediately after such of the aforesaid interviews as were held with him he, in the course of his business as managing clerk to my firm, reported to me that similar statements were made at the said interviews to him by the said Dent, Palmer & Co. This information which, 27
as I have said, was given to me by him at the time of the

said interviews with him, was thereupon communicated by me to the plaintiff."

(Tr., pp. 58, 59, 60, 61 and 62;) also Coghlan's testimony, Tr., p. 49, Answer to Interrogatory VIII, and Martin's, pp. 52 and 53, Answer to Interrogatory VIII, fully confirming and establishing the above.)

28

With these instructions, Martin & Co. received the "dividends," giving no receipt therefor. The following is a copy of the endorsement on the bonds:

"July, 1870.

"Paid on the bond £7, 10s., half year's dividends due 1st Jan'y, 1870, as if it had been exchanged for a new bond.
For Dent, Palmer & Co.

"W. WOODS."

29

"9th Jan'y, 1871, do., do., due 1st Jan'y, 1871.

"WOODS."

There is no receipt by Martin or Coghlan till the 2nd July, 1879, (Tr. p. 81.)

The bonds all this time were in the possession of Martin & Co.

Martin gives receipt for the interest 2d Jan'y, '79, and 8th June, '80, and Coghlan does the same on 4th Feb., 1880.

30 The receipts are alike, and can be seen on pp. 81, 82 and 83 of the transcript.

Coghlan's testimony, (Tr. 99 Answer to 4th Interrogatory:)

"When I received the payment on account of interest from time to time from Messrs. Dent & Co, who were then the agents of the defendant, Company, it was on the understanding that I waived no right of mine under the bonds, and one of those rights both Mr. Corbin and Mr. Bacot have written to me to say is seven per cent. interest. With refer-

31 ence to the receipt to Messrs. Baring, (who had then succeeded Messrs. Dent in the agency of the said company,)

signed by me on the 4th Feb., 1880, and other receipts to them signed by Messrs. Martin, my bankers, I have to say, that those receipts were signed as a matter of course, and on the supposition that the same understanding arrived at with Messrs. Dent applied and was in force."

This testimony is not contradicted. In fact, no member of the firm of Dent, Palmer & Co., or of Baring Brothers is 32
examined by the Rd. Co.

The bonds are the bonds of a South Carolina corporation, and executed in South Carolina, and guaranteed by South Carolina, and secured by a statutory mortgage of property in South Carolina, and are, both principal and interest payable in London, England.

They fell due on 1st January, 1866. There are seven unpaid coupons on the bonds, viz: those which fell due 1st January, 1863, to 1st January, 1866, inclusive. Interest also 33
was not paid on 1st July, 1865, to 1st January, 1868, four half-yearly payments.

Eight half-yearly payments would have amounted on £500 bonds to £100, and thus change them to £600 bonds, and on the £250 bonds to £50, thus changing them to £300 bonds.

The other three half-yearly payments are ignored by the circuit court decree.

There is no stipulation in the bonds of rate of interest or 34
place of payment after maturity.

Judge Bond's decree, filed 15th Dec., 1883, (Tr., p. 110,) finds,

1st, That on each £250 bond Coghlan is to receive £300, with interest thereon, at the rate of 5 per cent. per annum, payable semi-annually from 1st July, 1868, less previous payments.

2d. That on each £500 bond he was entitled to receive 35
£600, with like interest thereon.

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(Tr., pp. 58, 59, 60, 61 and 62;) also Coghlan's testimony, Tr., p. 49, Answer to Interrogatory VIII, and Martin's, pp. 52 and 53, Answer to Interrogatory VIII, fully confirming and establishing the above.)

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31

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2d. That on each £500 bond he was entitled to receive 35
£600, with like interest thereon.

And referred it to a Master to calculate the amount on this basis.

The appellant took this decree directly to the Supreme Court, but upon the present counsel taking charge of the case abandoned this appeal, as not from a final decree, and went before the Master.

36

The Master reported (Tr. p. 115.)

1st. That the amount due the appellant up to 1st July 1887, is £10,620.

2nd. That the bonds held by the complainant are bonds of the Louisville, Cincinnati and Charleston Railroad Company, issued under the Act of the State of South Carolina of 12th December, 1837, and secured by the statutory mortgage created by said Act.

Under this Act the rate at which the pound sterling is
37 to be taken is not stated.

Under the decree, however, of this court made 15th day of December, A. D. 1883, Judge Bond, (Tr. p. 110,) said bonds were to be treated as if exchanged for the new bonds secured by the mortgage of the 1st July, 1868. * * By the terms of said bond the pound sterling in all payments was to be estimated at $4.44 4/9. Therefore, that the pound sterling in this case must be taken as worth $4.44 4/9.

The schedule annexed gives his calculation (Tr. pp. 116, 117) and in its result differs from his report. The amount
38 given in the schedule is £10.798, 18s 9d, or at 4.44 4/9 $48.790 56.

This report came before the circuit court, and on 12th September, 1887, Judge Simonton filed its decree. (Tr. pp. 129-130.)

It recommitted the report for the inquiry where the coupons of the bonds issued 1 July, 1868, were payable.

The Master reported 6th October, 1887, that the coupons of these bonds are payable in London. (Tr. pp, 130–131.)

Judge Simonton filed his decree on 14th October, 1887.
39 (Tr. pp. 132–138.) It practically confirms the Master's report and declares of no avail an alleged tender of $44,640

by the defendant. We say nothing of this, as there is no appeal from it by the respondents.

ASSIGNMENT OF ERRORS.

I. That the court erred in not holding that upon all the bonds held by the plaintiff and all past-due coupons thereon the plaintiff was entitled to seven per cent. interest from the day each bond and coupon fell due, to the day of any payments made thereon by the said railroad company or the receiver, and that such payments should then have been deducted from the amounts then due on each bond, and the interest thereafter should have been calculated on the balance then found due at the rate of seven per cent. per annum, payable semi-annually, and so forth.

II. That the court erred, even if the decree is correct in other respects, in not ordering the interest or coupons due 1st January, 1867 (£150), 1st July, 1867 (£150), and 1st January, 1868 (£150), which were not capitalized, to be paid with interest from those respective dates to the date of the decree of 2nd November, 1887.

III. That the court further erred in not holding that even if the receipt by the plaintiff for interest paid by the South Carolina Railroad Company and its receiver estops the plaintiff from re-stating the account between the defendant company and himself, still the plaintiff is entitled to seven per cent. on the debt due to him from the date of such last payment.

IV. That the court erred in not holding that the plaintiff is entitled to the lien of the statutory mortgage to the State of South Carolina, which is prior to the mortgage made by the said railroad company to Gourdin, Walker and Calder.

V. That the court erred in not holding that the plaintiff is entitled to have the pound sterling calculated at whatever rate it will require to buy a sight draft on London on the

day of the payment of the debt due to him, or at least at the day judgment in his favor is rendered.

VI. That the court erred in not decreeing that the plaintiff is entitled to the sum of ninety-four thousand one hundred and thirteen $\frac{9}{100}$ dollars ($94,113.09).

ARGUMENT.

44

The first thing that will strike this court is that the circuit court has held that the appellant has done that which he declared he would not do—has not in fact done—and which the respondent's agent assured him he had not done, viz:

Converted his bonds of 1838, with the state's guarantee on them—with no limit on the value of the pound sterling
45 —with the question of the rate of interest after maturity open

Into bonds without this guarantee; with the value of the pound sterling fixed arbitrarily at an amount below its true value ($4.44 4/9) with the rate of interest after maturity fixed at 5 per cent. and with the surrender of three coupons, which to the date of the decree even calculated as the circuit court ordered at 5 per cent. with interest on interest at same rate amounts to £1,128.15s or even at the $4.44 4/9 measure to $5,113.24.

46 The result is startling.

The questions now before the court are:

1st. By what law is the rate of interest on these overdue bonds fixed, that of England (5 per cent.) or of South Carolina, (7 per cent)?

2. Shall the value of the pound sterling be arbitrarily fixed
47 at $4.44 4-9 and not be such sum as would buy a sight draft on London on the day of the judgment.

3. Is not the appellant entitled to his three unpaid half yearly interest coupons which have been simply ignored by the Circuit Court.

4. Is the appellant estopped from making any of the above claims, otherwise valid, by his conduct?

I.

48

RATE OF INTEREST.

The appellant claims that upon all past due coupons and past due bonds, he is entitled that interest be calculated according to the rate fixed by law of South Carolina, viz.: seven per cent.

That this is the rate in South Carolina upon both over due bonds and coupons, was not disputed. But if it is now, it is enough to refer to the case of *Langston v. South Carolina Railroad Company, 2 So. Ca., 249.* 49

This was an action on three coupon bonds of the South Carolina Railroad Company.

By them the company promised to pay to bearer five hundred dollars, "with interest at the rate of six per cent. per annum. * * The said interest to be paid annually on presenting proper coupons at the South Western Railroad Bank in Charleston, S. C. * * The said interest being di- 50 vided by agreement of the said company into four quarterly payments, by coupons payable in January, April, July and October." The bond and several coupons were past due.

The plaintiff claimed interest on the bonds and coupons from the day they fell due with interest at 7 per cent., and not at 6 per cent. as named in the bond.

The defendant denied this, and denied further that any interest was due on the past due bonds and coupons, because they had not been presented at the South Western 51 Railroad Bank.

Curia. "The bonds are to be held as payable on a specified day, and whether interest is to follow their non-payment from the time they fell due, as a part of the contract, by the recognized rule appertaining to the breach of a written promise to pay a named sum at a fixed period, or as compensation, in the way of damages, for the detention of the debt, the principle has been too long established to
52 be the subject of doubt at this day. Ryan vs. Baldrick, 3 McC., 498; Wister, Liter & Price vs Robinson, 2 Bail., 274." * * * * * * *

"The difference which for so long a period prevailed between the King's Bench and the Common Pleas on this question, whether it is necessary for the holder to aver and prove a demand at the place fixed for payment, has never affected the American courts. They have been almost of one mind in holding that 'in actions on promissory notes against the maker, or on bills of exchange, where the suit
53 is against the maker in the one case, and the acceptor in the other, and the note or bill is made payable at a specified time and place, it is not necessary to aver in the declaration, or prove on the trial, that a demand of payment was made in order to maintain the action. But if the maker or acceptor was at the place at the time designated, and was ready and offered to pay the money, it was matter of defence to be pleaded and proved on his part. This, if the place of payment is a bank, and the money be there deposited to meet the note or bill, will exonerate him
54 from all costs and damages; and, if such place be other than a bank, an offer to pay the money at the time and place would protect him from interest and costs on bringing the money into court.' Wallace vs. McConnell, 13 Pet. 136; Story on Bills, sec. 288, and note.

"In this state the same principle was held in Smith vs. Burrell, manuscript, Charleston, November term, 1827, and in Clark vs. Gordon, 3 Rich., 313.

"The plaintiff claimed, in the circuit court, his right to interest on the bonds from the time they severally became
55 due, at the rate of seven per cent. per annum. We hold that he is so entitled.

"If the debt bears a fixed rate of interest on its face higher or lower than that prescribed by law as the legal one, where the parties do not contract that it shall be the rate after the debt becomes due, the interest fixed by law attaches on it for the detention of the principal sum.

"Decisions in the courts of some of the States may be found maintaining a different rule, but the weight of authority is against them.

56

"In this State, in the case of Gaillard, ex'r, ads., Ball., I. Nott & McCord, 69, it was held, that where a person entered into a bond, conditioned for the payment of four per cent. interest on legacies till the legatee comes of age, to pay him his proportion of the principal, the legatees are entitled to seven per cent. interest (i. e., the legal interest of the State) from the time the bond becomes due.

"In Brewster vs. Wakefield, 22 How., 118, in which the opinion was delivered by Chief Justice Taney, the court held, as to the mode of computing interest where the note did not, by the contract, carry the interest expressed until its full satisfaction, that, when it fell due, the statute must interpose and regulate it.

57

See Texas vs. Marlor, 701.
Walnut v. Ward, 103, U. S., 683.

It will be noticed that the above bonds are those of the defendant Company, with the same provision for the payment of interest, except as to rate.

58

Also in South Carolina when the interest is payable at certain times, interest is calculated on interest from the dates it fell due.

In O'Neall vs. Bookman, 9 Rich. L. 80, 82. Curia, "Within the period of the stipulated credit, when the interest is to be paid annually, no one questions, that the interest should be computed on the interest from the respective periods fixed for the payment [Gibbs vs. Chisolm, 2 N. & McC., 38; Singleton vs. Lewis, Exor., 2 Hill, 408; O'Neal vs Sims, 1 Strob, 115; DeBruhl vs. Neuffer, Id. 426.] This we must

59

regard as settled upon immovable foundation of authority in the books of reports, reinforced by innumerable instances of conformity in circuit decisions and transactions of daily occurrence. But the question now before us presents a variation from some of our cases, but not from all of them. It is a case where the specific credit has expired;—and shall the terms, "with interest payable annually" be applied to the in-
60 terest annually accruing, at the period of each year following the time set for the payment of the principal?

"Why should they not so apply, when they were so intended by the parties? Undoubtedly they must if the law do not forbid.

"There can be no law to forbid, unless it can be found in the legislation upon usury. That forbids one to "take, directly or indirectly, for loan of any moneys, &c., above the value of seven pounds for the forbearance of one hundred pounds for one year, and so after that rate for a greater or
61 lesser sum, or for a longer or shorter time.

"We have already seen that it is not unlawful [that is, not usurious] to compute interest upon interest, promised to be paid at the expiration of each year, within the period of credit, expressly stipulated.

"But this decides the whole question; for it only remains in each case to ascertain what the debtor has promised; whether he intended to promise to pay interest annually, beyond the time fixed for the payment of the principal, if the forbearance should extend beyond that time; for if he
62 did, there is no more usury in applying the same rule of computation to the next year following than to that next preceding that time. The matter is thus solved; a party promises to pay at a given time one hundred dollars, with interest from a given time. At the day of payment what is due? The principal and interest. From that time what is foreborne? Not the principal only, but all as to which default is made, to wit: the principal and interest; both are equally payable at the time.

"So it is not the forbearance of one hundred dollars only
63 but of more.

"And where the contract [whether expressly or by legal

implication] extends to another succeeding period when the interest is again payable, there is another sum at such time in addition to the principal, again forborne. It is at last but seven per cent. per annum, or at that rate, for the forbearance of one hundred dollars, or of a greater or less sum."

This case was fully sustained by the Court of Errors of South Carolina in *Wright vs. Eaves, 10 Rich. Eq., 582.* 64

"We think the mode of computing interest was properly settled in *O'Neall vs. Bookman.* And as equity follows the law it can hardly be necessary to say anything on this point. Indeed the full opinion of my brother Withers in that case on a contract like this for the payment of interest annually ought to supersede comment."

These cases have been followed without variation.

See Sharpe vs. Lee, 14 S. C., 341
Small vs. Small, (S. C.) 11 So. East, 763.

65

Though as fixed by this court in *Holden vs. Trust Co., 100 U. S. 74;* this "question of interest is always one of local law;" the rule of this court is the same as that of South Carolina.

Brewster vs. Wakefield, 22 How. 118.
Aurora City vs. West, 7 Wall 105.
Bernhizel vs. Furman, 92 Wall., 179.
Holden vs. Trust Co., 100 U. S. 73 & 74.
Ohio vs Frank, 103 U. S. 697.
Massachusetts vs. Miles, 137 U. S. 691.

66

As to the question of the rate.
Does the law of South Carolina, 7 per cent. govern?
Does the law of England, 5 per cent. govern?

We submit that the law of South Carolina does!

67

No question of law has been more unsettled than this—whether the *lex fori* or the *lex loci contractus*—the *lex loci celebrationis*—or the *lex loci solutionis*—shall prevail; has never been definitely settled,

In that learned essay by Mr. Dicey, of the English bar, in the American Law Review of July, 1882, (16 vol. 497 ss) which our friends on the other side quote with such
68 approval. He says:

"A student, however, who consults the decisions of the English tribunals will find it no easy matter to deduce from them a clear series of rules. * * *

"Even a trained lawyer who has not carefully considered the nature of *a bill of exchange* and the principles which regulate the conflict of laws, is likely to come to the conclusion that the whole subject is in a state of confusion and that the decisions of the English courts (*with which alone I am concerned*) are not reducible to any common grounds of
69 principle. * *

My object is to show that this conclusion, natural though it be, is in the main erroneous * * (Still) these decisions are, indeed, not always consistent."

Such is the conclusion reached by so able and thoughtful a writer as Mr. Dicey, as to the theory for the solution of the difficulty which he puts forward.

He is considering bills of exchange and them only—not bonds payable to bearer or promissory notes—but only bills of exchange with the rights and duties of drawers,
70 acceptors, &c.—a very important distinction when the question of the rate of interest after maturity is concerned.

Mr. Dicey, as a philosophical lawyer, is considering what the law *ought* to be, and when my friends quote his formula,

"When the contract is made in one country and is to be performed in another, the incidents of the contract are to be determined at any rate, so far as the performance is concerned, by the law of the country where the contract is to be performed (*lex loci solutionis.*)

"The effect of this formula is, that the incidents, or, as
71 they are sometimes termed, the obligation of the contract must be determined by the law of the country where the

contract is to be performed." Am. Law Review, July, 1882, p. 504.

They should have added his remark: "To the correctness of this conclusion many of my readers will demur." Ib., p. 504.

And when they quote from Ibid, p. 510: "The place at which each party to a bill or note undertakes that he himself will pay it is, with regard to him, the *lex loci contractus*. 72
Consequently, with regard to each of the parties to a bill, interest in the nature of damages, where there has been no express contract, may be of a very different amount. Where a bill was drawn, indorsed and accepted in France, but payable in England, it was held, in an action against the acceptor, that he was only liable for the English rate of interest."

They should have added the conclusion of the sentence: "But if the action had been against the drawer upon default of the acceptor, his liability to interest would have been regulated by the rate of interest in France, (a higher 73
rate than in England.)"

If the laws as to bills of exchange is identical with that as to bonds and notes; is not the maker of these bonds, &c., equivalent to the drawer (maker) of a bill of exchange, and in case of default must he not then according to Mr. Dicey, pay interest according to the rate of interest due in the country where the bonds were made—in our case, the rate of interest in South Carolina.

74

Mr. Dicey cites specially under this head, Gibbs vs. Fremont, 2 Ex., 25, though he criticises it somewhat. In this case, Gen. Fremont, as Governor of California, drew on James Buchanan, secretary of state at Washington, for $6,000. Payment was refused. The only real question was the rate of interest. *Curia.*

"The general rule in all cases like this, the present, is that the *lex loci contractus* is to govern. * * In the case of a bill, drawn at A., it *prima facie* bears interest as a debt at A. would do, if nothing else appear. But if that bill be 75
endorsed at B., the endorser is a new drawer, and it may

be a question whether this endorsement is a new drawing of a bill at B., or only a new drawing of the same bill; that is, a bill expressly made at A. In the former case it would carry interest at the rate at B.; in the latter at the rate at A. On this subject we find *a difference of opinion in the books*, Mr. Justice Story, (Conflict of Laws, §. 314,) maintaining the former, and Pardessus, (Cours de Droit
76 Commercial, pt. 7, tit. vii. c. 2, Art. 1500,) the latter opinion. But this is a contract at Ciudad de los Angelos, by which the defendant there offers the payee, in discharge of a debt due there, the payment at Washington by an acceptor there of a given sum. That sum is not paid. The defendant's original liability, then, revives on notice of dishonor duly given to him. The defendant becomes liable to pay as he was liable at first. Now, at first he would have paid the money at Ciudad de los Angelos, and, if he did not, he would have been liable to pay interest at the usual rate in California for
77 a period as long as the debt remained unpaid. That amount he ought to pay now."

It is easily seen from the above that, with the question of acceptance and endorsement added, the case before Mr. Dicey is very different from that of a negotiable bond, of which there is neither acceptance nor endorsement.

Really, if the want of analogy does not render the article wholly inapplicable, it would seem that according to it; the interest on these bonds signed, sealed and executed in
78 South Carolina, and secured by the guarantee of South Carolina, and the statutory mortgage of property in South Carolina, now that they are past due, is payable according to the law of South Carolina.

But after all, as said, the article is that of one of the distinguished philosophical jurists of the day; seeking to make the law what he thinks it should be; and he frankly admits that the decided cases do not support him—altogether at least.

79 His theory does not reconcile the cases, nor the text books.

In Bennett's Edition of Story on Conflict of Law, (7th Ed.) the doctrine is thus summed up in §296 a.:

"And generally the *lex fori* will govern the allowance of interest for delay of payment and the rate thereof, unless it be shown that the *lex loci contractus* requires a different rule. If the contract itself does not stipulate for interest, and there is no other contract, express or implied, for the 80
payment of interest, but the only claim for interest is because of delay of payment after the principle is due, it is now generally agreed that the interest is to be computed according to the law of the place where the judgment is recovered, and not according to the place where the contract was made, *or where it was to be performed*, although it be affirmatively shown that the rate differs in those places from that where the remedy is sought. But if there is an express or implied agreement to pay interest, whether in the contract or out of it, although no rate be specified, the 81
lex loci contractus, and not the *lex fori*, governs. It has sometimes been urged as an objection to adopting the rule of the rate of interest in the jurisdiction where the action is brought, when interest in claimed merely as damages for delay of payment, that it would allow the creditor to wait until he could find his debtor or his property within a jurisdiction where a much higher rate of interest is allowed than at the place of contract; but a debtor can always avoid this danger by performing his contract."

Judge Story does not claim that there is consistency in 82
the cases. On the contrary, he regrets the inconsistency and devotes several paragraphs to its consideration. §§297 and 298.

In this state of doubt, writers on the conflict of laws have sought a solution of the matter.

One of the most recent, and it seems to us most satisfactory of these is that of Prof. Bar, of Gottingin, Germany. One who, like Mr. Dicey, belongs to the philosophical 83
school of lawyers—jurists properly so-called—but one who,

in contrast to Mr. Dicey, not born and educated in England, amid

> "That endless myriad of precedent,
> That wilderness of single instances,"

is less bound by precedent, and is freer to seek a solution of the matter.

Discussing the *lex domicilii*, the *lex loci solutionis* of the debt-
84 or, and saying that it cannot always be the ruling principle in contracts, he says:

"If in some foreign country where a subject of this country has an estate or a trading house, a higher rate of interest than ours is allowed and is in use by reason that capital is more scarce or the security is not so good, then the foreign lender, with whose money the estate has been improved or the trading concern extended, is entitled even in our courts to demand his higher rate of interest as was arranged.
85 The restrictions on the rates of interest are local taxes upon the price of money. The opposite theory instead of benefitting our citizens, would destroy their credit. * *

"It is of more consequence whether the money lent has been spent here or abroad In the first case the local limitations upon interest receive effect, but not in the second * *

"Our law on the subject must be applied if a foreigner lend one of our subjects money for the improvement of an estate in this country, or for the extension of a business carried on here.

86 "It is plain what an advantage this has over that which rests upon purely external characteristics, by which the laws of the place of performance or of the execution of the contract is applied in every case. The application of our laws is fully insured, what they are not allowed, is to hamper foreign trade by their interference."

Bar International Law.
Translated by Gillespie, Ed. 1883, pp 267—8.

Mr. Wharton adopts this theory and works it out with
87 clearness.

Among other illustrations, he uses the case of money

loaned in New York for Western enterprises, e. g. to open a mine in Colorado. In New York as the security for money loaned is generally good, the rate of interest is low ; while that loaned on the security of the Colorado mine, must be naturally uncertain and unsafe. For this want of security therefore, the higher rate of interest—in Colorado—of the place where the money is used, is allowed.

Conflict of Laws, Ed. 1881, §§503, 504, 508, 509 & 510. 88

This theory is the most satisfactory and goes far to solve, if it does not quite solve the discrepancy in the cases.

In all the cases I have been able to examine, the decisions rest practically at times on the *lex fori* and at times on the place where the money was used.

In *Goddard vs. Foster, 17 Wall., 243*, this court adopted the "*lex fori*" as the rule governing the rate of interest after 89
a contract had been violated and interest had begun to run, "specially as no rate is fixed in the contract and no place is designated for its performance."

In our case, no rate for interest after maturity is fixed nor is any place fixed for its payment after maturity—no agent is appointed in England, to accept service of legal proceedings—nor was it in any way possible to obtain a judgment in England which could be enforced against the company's property. The only remedy Coghlan had 90
was to appeal to the State, or, as that since the close of war is notoriously useless, to enforce the statutory mortgage given to the State to secure their bonds.

In *Ayer vs Tilden, 5 Gray 79*, a note was made in New York by a firm doing business there, and it was made payable in New York. It was sued upon in Massachusetts, where it had been used in the purchase of goods.

Curia. "The note was a contract made to be performed in the State of New York and its obligation and effect must 91
be determined by the laws of that State. (p 181.) * * *

"The plaintiffs (183) are entitled to recover * the principal of the note with interest at such rate as the law will allow. The interest is not as a sum due by the contract for by the contract no interest was payable, and is not therefore affected by the law of the place of the contract. It is given as damages for the breach of the contract and must follow the rule in force within the jurisdiction—where the judg-
92 ment is recovered, Grimshaw vs. Bender, 6 Mass., 157. Eaton vs. Mellus, 7 Gray, 566; Barriger vs. King, 5 Gray, 12. * *

"An objection to adopting the rule of the rate of interest in the jurisdiction where the action is brought as the measure of damages may be worthy of notice, that this rule would allow the creditor to wait until he could find his debtor or his property within a jurisdiction where a much higher rate of interest was allowed than at the
93 place of the contract. But a debtor could always avoid this danger by performing his own part, and the same difficulty exists in relation to the actions of trover and replevin."

It will be noted that this case is specially approved in Story, Conflict of Laws, which quotes these words. Supra p.

Ives vs. Farmers' Bank, 2 Allen, 239, is like Ayer *vs.* Tilden in every respect, and confirms it fully. So also,

Price vs. Smith, 11 Gray, 38

94 In all these cases no special stress is laid upon the fact that the money was used in Massachusetts, though in some it is expressly stated that it was used there and in the others, it is a fair inference that it was the place where the money was used.

On the other hand, in the same state. Winthrop, of Charleston, paid moneys for Carleton, of Boston, a ship-owner, for the use of his ship then in the port of Charleston. The moneys were used in Charleston.

95 It was held on suit in Massachusetts that Winthrop was entitled to 7 per cent., the South Carolina rate, and could

not be compelled to take 6 per cent., the Massachusetts rate for interest.

Winthrop *vs.* Carleton, 12 Mass., 4, with numerous cases cited.

cf. Von Hemert *vs.* Porter, 11 Met. 210.

The same is true of New York.

In Chapman *vs.* Robertson, 6 Paige, 632, the borrower 96
was a New Yorker and borrowed money in England of an Englishman. The bond and mortgage were executed in New York and sent to England for delivery to the lender. He paid the money in England to the bankers of the New Yorker. Still the money was used in New York and on suit in New York, interest after the maturity of the bond which was not provided for by the bond, was allowed at the New York rate, 7 per cent. and not at the English rate.

cf. Turner *vs.* Calender, 1 De S. (So. Ca.) 160.
Boyce *vs.* Edwards, 4 Pet., 111 97
Lanusse *vs.* Barker, 3 Wheat., 101.

The cases in the United States Supreme Court show the same *apparent* discrepancy, though *real* agreement on the point suggested by Prof. Bar that after *maturity*—not simply from suit brought—the rate of interest allowed is that of the place where the money is really used.

De Wolf *vs.* Johnson, 10 Wheat.
Andrews *vs.* Pond, 13 Pet., 65,
Cook *vs.* Moffett, 5 How., 310. 98
Buckley *vs.* Harold, 17 How., 391.
Miller *vs.* Tiffany, 1 Wall, 310.

Giving the place of performance as the place fixing the rate of interest after maturity, really support Prof. Bar's rule as the place of performance was where the money was used.

Godard vs. Foster 17 Wall 123, which fixes the *lex fori* as the proper guide for the rate of interest, also confirms Prof. Bar's rule, as the forum and place where money was, were 99
the same in this case.

Cromwell & Co., of Sac., 96 U. S., page 51 is worthy of spe-

cial notice and, as an authority, seems decisive of Coghlan's rights. It also sustains Prof. Bar's views.

The Commissioners of Sac, Iowa, issued bonds, payable to bearer at the Metropolitan Bank in New York. The coupons were also payable there. The money borrowed, for which the bonds were given, was to build a Court House in the County of Sac.

100 The County contended that interest after maturity should be the New York rate, 7 per cent. and not the Iowa rate 10 per cent., stipulated in the bond.

The Court gave the 10 per cent. on the bonds and 6 per cent. on the coupons according to the *lex fori*, and not the 7 per cent. according to the law of the place of payment.

In Scudder vs. Union, National Bank, 91 U. S., cited in part by the other side, the court says: "The suit to recover upon the alleged acceptance, or upon the refusal to accept, being in the State of Illinois, and the contract having been made 101 in that State, the judgment is to be given according to the law of that State. The law of the expected place of performance, should there be a difference, yields to the *lex fori* and the *lex loci contractus*.

"In Wheaton on conflict of Laws, sec. 401, p. —, the rule is thus laid down:

'Obligations in respect to the mode of their solemnization, are subject to the rule *locus regit actum*; in respect to their interpretation, to the *lex loci contractus*; in respect to the mode of their performance, to the law of the place of 102 their performance. But the *lex fori* determines when and how such laws, when foreign, are to be adopted, and in all cases not specified above, supplies the applicatory law."

"*Miller vs. Tiffany*, 1 Wall, 310.

"*Chapman vs. Robertson*, 6, Paige, 634.

"*Andrews vs. Pond*, 13 Pet, 78.

"*Lanusse vs. Barker*, 3 Wheat, 147.

"*Adams vs. Robertson*, 37 Ill., 59.

"*Ferguson vs. Fuffe*, 8 C. & F., 121.

"*Bain vs. Whitehaven, and Furness Junction Ry. Co.*, 3 H. L. Cas. 1.

103

"*Scott vs. Pilkinton*, 15 Abb. Pr., 280.

"Story, Confli. Laws, 203; 10 Wheat, 383."

(Then comes what the other side cites and the court continues):

"So, if a note payable in New York, be given in the state of Illinois, for money *there lent*, reserving ten per cent. interest, which is legal in that state, the note is valid, although but seven per cent. interest is allowed by the laws of the former state.

" *Miller vs. Tiffany*, 1 Wall, 310. 104
" *Depeau vs. Humphry*, 20 How., 17.
" *Chapman vs. Robertson*, 6 Paige, 634.
" *Andrews vs. Pond*, 13 Pet, 65"

II.

AS TO THE THREE COUPONS IGNORED BY THE CIRCUIT DECREE.

105

These coupons are still attached to the bonds, in the hands of the appellant, who is also the holder of the bonds. That they are not barred, by time was not questioned. Nor are they. They became due January and July, 1867, and 1st January, 1868. This suit was begun on the 4th April, 1881. Twenty years is the bar to the bonds in South Carolina. Shubrick v. Adams, 20 S. C., 52.

The City v. Lamson, 9 Wall, 483.
The City v. Butler, 14 Wall, 296. 106
Clark v. Iowa City, 20 Wall, 588.
Bond Debt Cases, 12 So. Ca., 273.

That they have not been paid is equally clear.

Tr., p. 50, Coghlan's testimony, Answer to 9th Interrogatory. Of Martin, & Co., Tr., p. 58, Letter 29 March, 1869. Tr., p. 61, Letter of Dent & Palmer & Co., 4 May, 1880.

No where in the testimony of any of the witnesses for the defendant company, nor in the answer of the company is 107 there any claim that they have been paid.

So much for the main question of the case.

III.

ESTOPPEL.

108

Another question has been raised. Has Coghlan estopped himself from claiming interest at the rate of 7 per cent. by accepting 5 per cent, for several years.

There is no pretence that he has made any bargain, any contract resting on any consideration whatever to receive
109 less than seven (7) per cent. If he had made any contract to receive less than what was due him; a less sum for a greater, due to him, it was *nudum pactum*, and not binding, there being no release under seal in this case. This is fixed law.

Harrison vs. Close, 2 Johns, 450.
Fitch vs. Hutson, 5 East, 232.

But while this is not maintained, it is said that his conduct in receiving 5 per cent. instead of 7 per cent. estopped
110 him. Does this conduct, this receiving less than he was entitled to operate as an estoppel to his now claiming what he was legally entitled to? Specially as he received it under the strongest protest he and his agent could make, and under the assurance of the company's agent, that this did not affect his rights.

This estoppel by conduct, as it is now called, has recently
111 been the subject of two elaborate treatises, Herman on Estoppel and Bigelow on Estoppel.

The latter (p. 480) sums up as follows:

"The following elements must be present in order to an estoppel by conduct:

"1st. There must have been a representation or concealment of material facts.

"2d. The representation must have been with the knowledge of the facts.

"3rd. The party to whom it was made must have been 112
ignorant of the truth of the matter.

"4th. It must have been made with the intention that the other party should act upon it.

"5th. The other party must have been induced to act upon it."

See Hand vs. Char. & Sav. Ry, Co. 12 S. C., 350 and 355.

Upon this principle rests the following cases:

Irwin Lick Oil Co. vs. Marbury, 91 U. S., 587. 113
Howard vs. R'y Co., 17 Wall, 81.
Wagner vs. Baird, 7 How., 106.
Badger vs. Badger, 2 Wall, 92.
Taylor vs. Benham, 5 Howard, 233.

Not one of these elements is to be found in this case.

But further the testimony shows conclusively that at the time he received less interest than 7 per cent., Coghlan was ignorant that he was entitled to 7 per cent.; that 7 per cent 114
was the legal rate in South Carolina.

"It is clear that a person in ignorance of his rights cannot be presumed to have abandoned them."

Perry on Trusts, sec 867.

"Length of time," says L. J. Turner, "when it does not operate as a statutory or positive bar operates as evidence of assent or acquiescence. That acquiescence imports full knowledge, for I take the rule to be quite settled that a *cestui* 115
que trust cannot be bound by acquiescence, unless he has

been fully informed of his rights and of all the material facts and circumstances of the case, (p. 76.) The onus lies on the party relying on acquiescence to prove the facts," p. 77.

Life Association vs. Siddel, 3 DeG. F. & J., 58, 83.

And again, in Cockerel vs. Cholmley, 1 Russ and M., 425, upon the doctrine of confirmation, &c:

116 Lord Eldon says:

"It has been argued that the defendants being aware of the facts of the case, Sir Henry Englefield has, by his silence and *being a party to the application to Parliament*, confirmed the title of the plaintiff. In equity it is considered, as good sense requires it should be, that no man can be held by his own act to confirm a title, *unless* he was fully aware at the time, not only of the facts upon which the defect of title depends, *but* of the consequences in point of law, and here there is no proof that the defendant at the
117 time of the acts referred to, was aware of the law on the subject, nor was it ever alleged in the argument."

(S. C.) 3 Russell, Eng. Ch. R., vol. 3, 574.

See Lewin, p. 778.

(Same case, note.) "Upon this doctrine of confirmation and acquiescence we must distinguish. An express ratification may be *proven*, and entire acquiescence may be *inferred*. The latter may arise from lapse of time, omission to complain, and other circumstances; the former is simply to be
118 established by evidence. *But both equally depend for being effectual* on the fact that the party had (1) full and perfect knowledge of all his rights; (2) of all the facts of his case; (3) *and of his ability to procure relief by application* to the courts of justice."

In Pierce vs. Langdon, 99 U. S., 581, the supreme court says, "Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import the foundation for this action. One cannot
119 waive or acquiesce in a wrong while ignorant that it has been committed; current suspicion and rumor are not

enough. There must be knowledge of facts which will enable the party to take effectual action."

But outside of this, the testimony of Martin, wholly uncontradicted, though before the counsel in this case for a year or more, shows that Coghlan accepted the 5 per cent. on the express arrangement that it should not prejudice any claim he had in the premises. 120

It is replied that if he was ignorant of his rights, this ignorance was not of facts but of law, and that ignorance of law never excuses

In South Carolina, Lowndes vs. Chisolm, 2 McC. Ch., fully refutes this.

Here the court says, "It is well established that relief is given in cases where the mistake is clearly one of law, and the authorities cited and relied on put the matter beyond all doubt, if indeed it could be doubted at this day. 121

"The only case on which I shall make any particular comment is that of Hunt vs. Rousmanier, 8 Wheat., 215, in which the point is expressly decided in the opinion delivered by Ch. J. Marshall in which he refers to some of the English cases which have been relied on in the argument, and says: 'although we do not find the naked principle that relief may be granted on account of ignorance of law asserted in the books, we find no case in which a plain and acknowledged mistake of law is beyond the reach of equity,' and surely no case can prove more clearly that such mistake 122 is not beyond the reach of law than the case of Lansdowne vs. Lansdowne, Moseley's Rep., 346. The ignorance in that case was that the complainant was entitled as eldest son to the estate, and yet relief was afforded in so plain a mistake."

Fully confirmed in Hopkins vs. Mazyck, 1 Hill Eq., S. C. 251.

But this is a matter of general law and the United States Court is not bound by a State decision but will follow its own in *Snell vs. Ins. Co., 98 U. S., 90, 91* which fully establishes the rule that ignorance of law will be relieved in 123 equity as well as ignorance of facts.

In this case the Court says: "It may be said that the mistake made out was a mistake of law, and, therefore, not relievable in equity. It was stated in *Hunt vs. Rousmanier's Administrators*, 1 Pet., 1, as a general rule, that mistake of law is not a ground for reforming a deed, and that the exception to the rule were not only few in number, but had something peculiar in their character. The court, however
124 was careful to say that it was not its intention to lay it down, that there may not be cases in which a court of equity will relieve against a plain mistake, arising from ignorance of law. In the same case (8 Wheat. 174,) Mr. Chief Justice Marshall said that he had found no case in the books in which it has been decided that a plain and acknowledged mistake of law was beyond the reach of equity, In 1 Story, Eq., Jur., sect. 138 *e* and *f* (Redf. ed.) the author. after stating certain qualifications to be observed in granting relief upon the ground of mistake of law, says that the
125 rule that an admitted or clearly established misapprehension of the law does create a basis for the interference of courts of equity, resting on discretion, and to be exercised only in the most unquestionable and flagrant cases, is certainly more in consonance with the best considered and best reasoned cases upon the point, both English and American.

"The same author says: 'We trust the principle that cases may and do occur where courts of equity feel compelled to grant relief, upon the mere ground of the misapprehension of a clear rule of law, which has so long maintained its
126 standing among the fundamental rules of equity jurisprudence, is yet destined to afford the basis of many wise and just decrees, without infringing the general rule that mistake of law is presumptively no sufficient ground of equitable interference.

"In the case under consideration, the alleged mistake is proven to the entire satisfaction of the court. * * *

"As soon as he (the one who suffered from the mistake) had a reasonable opportunity to consult counsel, he discovered the mistake, and promptly insisted upon the rights
127 secured by the original agreement. A court of equity could not deny relief under such circumstances, without

aiding the insurance company to obtain an unconscionable advantage, through a mistake, for which its agents were chiefly responsible.' "

Coghlan's ignorance, however, was of a fact not of law for in his letter to Mr. Fisher of 10th Feb., 1880, he says, "with regard to the interest I suppose it will be the legal rate of South Carolina:" the fact (what was the legal rate of 128
So. Ca.) he was ignorant of.

But further it must be remembered that Coghlan if ignorant of a law at all is only ignorant of a foreign law. No court has ever held that one must know the laws of foreign countries at his peril. Not even the courts take cognizance of these.

IV. 129

Lastly the defendant company says:

STALE CLAIM.

Is the claim stale?

With hardly an exception, the cases holding claims to be stale rest on Lord Camden's celebrated decision in *Smith vs. Clay*, generally cited as from *Ambler 645*. 130

The fullest report of the case, however, is found in a note to *Deloraine vs. Brown* in *3 Brown C. C., 639.*

"A court of equity which is never active in relief against *conscience* or *public convenience*, has always refused its aid to stale demands, when the party has *slept* upon his rights and *acquiesced* for a great length of time. Nothing can call forth this court into activity but *conscience, good faith* and *reasonable diligence*."

There is no question of "*public convenience*" or "*good conscience*" in this case. 131

Public convenience has fixed twenty years as the bar to the

bonds in this case. This bar would, in this case, if not otherwise extended have arisen January, 1886. This suit was brought April, 1881. (Record f 1.) But the partial payments extended it to 1st July, 1879. So the presumption of payment does not arise till 1899.

No want of *good conscience* can, in this court, be attributed to Coghlan in asking payment of a debt undisputed in its
132 origin, and which, has not been paid.

Nor has he *slept* on his rights or acquiesced at all, he has stoutly maintained them, against every offer of the defendant company.

Blotting out, however, everything he has done except the present suit; has he, according to Lord Camden's definition of "reasonable diligence," been wanting in this?

Thirty to forty years had elapsed since the enrolling of a decree when a bill of review was filed to set it aside for error manifest on the record. This was the case before Lord
133 Camden.

Lord Camden held that as *twenty years* barred a writ of error, and as the courts had no "legislative authority," he was bound by this law; and that as a bill of review for error manifest on the record was equivalent to a writ of error, he held a delay over the twenty years was not "reasonable diligence."

So if this case of Lord Camden is an authority, and if the staleness of the claim consists in time alone, the period of the legal bar (twenty years in case of a bond) must have
134 elapsed. And in this case there is none other. See Montgomery vs. Cloud, 27 S. C., 188, fully sustaining this conclusion.

In Attorney General vs. Mayor of Exeter, Jacobs, 446, two hundred years had elapsed since the trustee (the city) had accounted, and it claimed that no account could be called for except for six years.

Sir Thomas Plumer made them account however. They had received the money for the last 300 years, and there is no difficulty from complicated accounts. All topics of hard-
135 ship generally urged against stale claims are wanting here.

These "topics of hardship" are "that parties and witnesses

are dead or their memories impaired, or that vouchers are lost."

Perry on Trusts, §869.

All these hardships are as absent from this case as they were from Sir Thomas Plumer's case.

Cromwell & Co., of Sac., 96 U. S., has held with many other cases that coupons are not barred till the bond is barred; 136
and this bond is not barred, and will not be till 1st Feb., 1899. Supra, p.

V.

VALUE OF THE POUND STERLING.

137

As to the second assignment of error, viz:

Shall the value of the pound sterling be arbitrarily fixed at $4.44 4-9, and not be such sum as would buy a sight draft on London on the day of the judgment?

Little need be said here. If Coghlan is not bound by provisions not in the bonds he holds, but in bonds which he has always stoutly refused to receive in the place of those he holds, then there can be no doubt, but that the general rule applies, and that he is entitled to a judgment for an amount of dollars which will buy a sight draft on Lon- 138
don for the number of pounds sterling to which he is entitled.

H. E. YOUNG,
For Appellant.

Charleston, 16th April, 1891.

UNITED STATES OF AMERICA

SUPREME COURT.

HENRY THOMAS COGHLAN, APPELLANT,

vs.

SOUTH CAROLINA RAILROAD COMPANY ET AL.

SUPPLEMENTAL STATEMENT OF FACTS ON THE PART OF THE APPELLANT. COGHLAN.

Henry T. Coghlan who was complainant below, and is appellant here, in 1842, bought 18 bonds of the Louisville, Cincinnati & Charleston Railroad Company, a corporation of the State of South Carolina. By these bonds, the Company promised to pay to bearer, in London, on January 1st, 1866, £6,000, and to pay interest thereon in London, at the rate of five per centum per annum, on the 1st January and 1st July, in each year, from date to the maturity of the bonds. The bonds were executed at Charleston, in the said State.

The said bonds were guaranteed by the State of South Carolina, which took, in 1837, for its security, a statutory mortgage of all the property of the said Company.

The Louisville, Cincinnati & Charleston Railroad Company and the South Carolina Canal and Railroad Company were subsequently consolidated under the name of the South Carolina Railroad Company, which is one of the appellees.

Default having been made on the bonds, the appellant filed his bill in a court of the State of South Carolina, against the South Carolina Railroad Company and others, praying that his debt should be established, and that he be declared to be entitled to the benefit of the said statutory mortgage, that the property described therein be sold and his debt paid out of the proceeds.

4 The suit was afterwards removed to the Circuit Court of the United State.

The South Carolina Railroad Company filed its answer, and the case was tried on bill answer, replication and proofs.

The appellant contended that he was entitled to the principal of his bonds and coupons, with interest on the coupons at 7 %, and with interest on the principal from January 1st, 1866, at the rate of seven per centum per annum, the legal rate of interest in South Carolina, to the date of the decree, and that the payments being made in South Carolina, he was entitled to the current rate of Exchange on

5 London. If his debt had been calculated on this principle, it would be, at the date of the decree, $94,113.09.

On November 2d, 1887, a decree was made fixing the appellants debt at $47,995 48, declaring the appellant entitled to a lien on the property of the South Carolina Railroad Company, and ordering a sale of the property described in the latter mortgage to satisfy the appellants debt. From this decree the appellant has taken this appeal.

It is apparent from the Master's report which was con-

6 firmed by the Court.

1st. That interest was allowed on the bonds after maturity, and on coupons at five per centum and not at seven per centum.

2d. That three instalments of interest were not allowed.

3d. That exchange on London was not allowed.

It is on these points and those stated in the main argument for the appellant that error is alleged.

7 H. E. YOUNG.
JAMES LOWNDES.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

October Term, 1891.

No. 47.

REPLY ON THE PART OF THE APPELLANT.

Appellee rests upon the endorsement on the bonds, viz:

"Paid on this bond £15, half year dividend, due 12 July, 1868, *as if* it had been exchanged for a new bond.

"(Signed,) FOR DENT, PALMER & CO.,
"P. J. WOOD.

To prove a new contract on the part of Coghlan.

"A receipt for money is peculiarly open to evidence. * * It is in fact not regarded as a contract, and hardly an instrument at all." 2 Parsons on Contracts, p. 555.

The receipt does not say that the bond had been exchanged for a new bond, for that was untrue.

It says only, "as *if* exchanged, &c.;" accounting merely for the amount paid, and nothing more.

It is written by the railroad company's agents, Dent, Palmer & Co.—not by Coghlan's agents, Martin & Co.

These agents held Coghlan's bonds "from the year 1849, until the commencement of these proceedings." Tr., p. 51, f. 131.

They say: "We received such moneys (the dividends on these bonds) under the understanding that the receipt of such moneys should not in any way prejudice any of the rights which the plaintiff might have for or in respect of the
5 aforesaid bonds. * * The understanding referred to was arrived at at interviews held between Dent, Palmer & Co., held at their office, 11 King's Arms Yard, in the city of London, and sometimes myself, and sometimes * the managing clerk of my firm."

Trans., p. 53, ff. 136–137.

Coghlan's testimony and the correspondence fully confirm this. See my argument in chief, pp. 3–9, with references to the Transcript.

6 The correspondence between Coghlan and Martin & Co. on the one hand, and that between Martin & Co. (Coghlan's agent) and Dent, Palmer & Co. (the railroad's agent), is fully set out in my main argument. Nothing that I find in my friend's argument shows my resumé inaccurate.

The correspondence shows conclusively that Coghlan refused positively to exchange his bonds with the State's guarantee for the new first mortgage bonds of 1868; that the agents of the railroad assured him that his acceptance of the "dividends" on his bond should not be so construed; and that his counsel advised him that his acceptance of
7 these dividends could prejudice him in no way.

Dent, Palmer & Co., through Martin & Co., give Coghlan the assurance, on the 27th March, 1869, that "the receipt of the July dividend of 1868 will not commit you in any way." Tr., p. 58, f. 159.

The correspondence then concludes with the following letters, Tr., ff. 155–159, p. 60:

HYDE PARK GARDENS, April 5th, 1869.

8 GENTLEMEN: It is, of course, impossible for me to take a solicitor's opinion on the new South Carolina railway bonds if Messrs. Dents refuse me a

copy of one, but with respect to the *interest* now offered my solicitor expresses himself as follows:

"I don't think the fact of your receiving a subsequent *dividend* on your bonds will interfere with your right to recover the *overdue ones*. You may, at the time of such application, renew your demand for such outstanding claim."

I suppose he means by this for the payment of the overdue bonds and *their arrears of interest.*

I remain, &c., H. C.

Messrs. Martin, 68 Lombard St., city.

Would you enquire and let me know if Messrs. Barings would be willing to undertake the enforcing of the payment of these overdue bonds in Charleston, South Carolina, or wherever proceedings should be commenced, or, if they are not, any other house? 9

68 LOMBARD ST., April 7, 1869.

SIR: We have applied to Mess. Baring Bros. on the subject of your letter of the 5th inst., but those gentlemen decline to have anything to do with enforcing payment against a State.

They tell us that by the Constitution of the United States it is expressly provided that neither the United States as a whole nor any separate State can be sued, nor can any action at law be brought against them, and that if *you decline accepting the terms of the State of S. Carolina in the matter of these railway bonds you have absolutely no remedy at all.* Under these circumstances it would be useless asking any English house of any standing to undertake your case, and we know no one in Charleston. 10

We will receive your dividend, as we quite agree with you that it cannot prejudice your claim in any way.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

APRIL 8th, '69.

GENTLEMEN: I hope you applied to Messrs. Dents for the arrears of interest and bonds in the way recommended by my solicitor, as by your letter of the 7th inst. you seem not to be aware that for these bonds I can proceed against the railway if not against the State.

I remain, gentlemen, &c., H. C. 11

Messrs. Martin, 68 Lombard St., city.

Let me have a line to say what amount you receive.

68 LOMBARD ST., April 13, 1869.

DEAR SIR: We have received and credited your account with £175 10, being ½ year's dividend on your S. Carolina railway bonds.

We remain, sir, your obed. servants,

MARTIN & CO.

H. T. Coghlan, Esq., 14 Hyde Park Gardens.

The last letter of Coghlan's to Martin & Co. was of 8th April, 1869. That letter and Coghlan's, of 5th April, 1869, 12

made their authority to receive the dividends. Their first receipt is dated 13th April, 1869.

That by "receiving a subsequent *dividend* on your (his) bonds," there was no waiver of his "right to recover the *over-due ones*."

My friend (argument, p. 8,) reads this as meaning the
13 bonds, and not the coupons or half yearly instalments of interest not paid.

He cannot be right in this.

A protest of a bond is a protest not only of the principal, but also of all pertaining to it—not only interest due, but also of all to become due.

But also grammatically, the reference here can only be to
14 the unpaid "coupons," or half yearly instalments of interest. Supra, p. 2–3.

Logically, it was the same. The railroad company never pretended that Coghlan could not claim his bonds—the principal of his debt. In fact the company wished him to consolidate eight coupons and increase the principal of his £500 bonds to £600 bonds, and his £250 bonds to £300 bonds, making the debt £7,200. The true debt was £7,650.

15 The principal debt never has been, and is not now denied.

Coghlan's view of the matter is expressed on p. 102, f. 255, of the Transcript.

He thought he was receiving 6 per cent., which he thought the legal rate in South Carolina, on over-due principal, and that he was giving indulgence to a road in distress for the remainder due to him.

Not only was the South in distress immediately after the
16 war, but as usual, the belief in its distress was greater than

the reality—specially in countries other than the United States. Coghlan doubtless shared this belief, and instead of calling down on him the epithet of "factitious (?) ignoramus," his action deserved the gratitude of the railroad company.

Remember that though Dent, Palmer & Co. still exist, not a witness is called by the railroad company to contradict Coghlan and Martin & Co. 17

And this; though this testimony was in, *before* 5th May, 1882, the date of the Master's report, (Tr., p. 63, f. 164.) while the case was not tried till the 21st April, 1883. (Tr., p. 109, f. 278.)

There are two, and only two, receipts by Coghlan himself, and special stress has been laid on them.

They will be found on p. 82 of the Transcript.

They must be taken in connection with the previous correspondence, and I cannot see in them any waiver of the three coupons or half yearly installments of interest (unquestionably unpaid), or of the other rights so sedulously maintained by Coghlan. 18

Admit, however, that Coghlan, who was neither "a lawyer nor engaged in mercantile pursuits," did make a mistake—that Martin & Co., experienced bankers, did exceed their authority, and make mistakes in the receipts given. 19

These receipts are not contracts.

They constitute no bargains.

They rest on no consideration: for

The receiving of a less sum for a greater sum due is not a consideration for a new contract. And

Even if the receipts constituted a contract it was *nudum pactum*, and not binding.

There was no release under seal. 20

Harrison vs. Clon, 2 Johns, 450.

Fitch vs. Hutson, 5 East, 232.

Yet more. It is the court, and not the parties, which must construe the contract. Their construction, even if shown to be that of both of them, cannot control a court.

I refer to the latest case on the subject in South Carolina, and as it is not yet in the Library at Washington, I quote the part relating to this matter in full, viz:

Smith vs. Smith (1890), 33 S. C., 214.

CURIA. "That brings us to the important question, as to the proper manner of calculating the interest on the Diercks
21 note assigned to Gilmore. The note is in the following words:

'$2,074.88. COLUMBIA, February 8, 1874.

One day after date, I promise to pay Gerhard Diercks, or order, two thousand and seventy-four $\frac{88}{100}$ dollars, with interest at one per cent. per month from January 1st, 1874, value received. (Signed), HENRY SMITH

Witness: J. C. H. TROEGER.'

22 "To this note there was attached a memorandum of credits, payments made at different times, in the hand writing of Diercks, showing that the parties calculated the interest at one per cent. per month. The Master (and the Judge concurred) held and calculated the interest at the rate of "one per cent. per month" up to the maturity of the note (February 7, 1874), and thence forward at the rate of seven per cent. per annum, the rate fixed by law. The appellant complains of this ruling, and insists that it was error not to calculate the interest at the rate of one per cent. per
23 month, after maturity and until paid. At the time the note was given (1874), parties might legally agree in writing for any specific rate of interest. As to the principle applicable in such case all agree that it is as stated in the case of Sharp & Lee, 14 S. C., 341, viz:" If the debt bears a fixed rate of interest on its face, higher or lower than that provided by law, the interest fixed by law attaches on it from the detention of the principal sum, when the parties do not contract that it shall be the rate after the debt becomes due.' This being so, whether there was such agreement must depend upon the intention of the parties, and it
24 becomes simply a matter of construction.

The appellant insists that construction consists in ascertaining what was really the intention of the parties, and that parol testimony should have been admitted to show what was intended, over and above and outside of the terms of the instrument itself It is the duty of the Court to construe all written instruments, and there is no rule of evidence more important and peremptory than that which declares that parol evidence is inadmissible to contradict or vary the terms of a valid written instrument. As Mr. Greenleaf (1 Ev. §273) says: 'When parties have deliberately put their engagements in writing in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagements, it is conclusively presumed that the whole engagements of the parties and the extent and manner of their undertaking was reduced to writing; *and all oral testimony of a previous colloquium between the parties, or of conversations or declarations at the time when it was completed or afterwards, as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice, possibly of one of the parties is rejected, etc.*' In the absence of any special agreement the law attaches, and therefore the onus of showing it rests upon him who makes the claim. Thus considering it, did the appellant show the existence of such agreement as to the interest beyond the maturity of the note? The rule is, that in construing a paper every word, if possible, should have its full effect, Is there any word in this note as to interest which necessarily points beyond the time of its maturity? It was due "one day after date," with interest at "one per cent. per month." If this were all, we would be obliged to say that the words "per month "indicated a time for the running of interest after the maturity of the note, which was within one day of its execution, as in the case of Sharpe vs. Lee, 14 S. C., 341, and Piester vs. Piester, 22 S. C., 139. But there were other words in the note closely connecting with and immediately following the phrase "per month," viz: 'from January 1st, 1874.' The time here named from which the interest was to run—something more than a month before the execution of the note—made it possible to count the interest for 'a month,' without going beyond its maturity; answered all

the words of the note, and excluded the conclusion—otherwise necessary—that the phrase 'per month' could not have its 'full effect,' without touching upon time, beyond the maturity of the note. This may look like a small difference to produce such consequences, but we think it is founded on principle and the decided cases. We cannot say that the Master and the Circuit Judge erred in their construction of the Diercks note. The judgment of this court is that the judgment of the circuit court be affirmed."

29

The testimony of Wilson and Burdell, two officials of the company, specially quoted by my friend, I hope will be read *in full*.

At best they were mere subordinates—not directors—and not presumed to know what took place long before they became officials.

30

The cases cited by my friend really add nothing to what I have freely admitted.

There are cases in every court of which I am cognizant which hold the *lex fori*, and also others which hold the *lex loci contractus*, as giving the proper rule.

The Massachusetts cases are specially remarkable. All hold the *lex fori* as the true rule, with the exception of one, Winthrop vs. Carleton, where the rule would have worked injustice. Prof. Bar's and Mr. Wharton's rule reconciles this case with the other cases from this State.

31

Savigny says the law of either country which sustained the contract should prevail—"*ut res magis valeat quam pereat*"—and my friends below rested on this very strongly.

But this can hardly be called a rule. Suppose the contract valid in both countries; yet one allows a higher rate of interest on past due obligations than the other—what then?

32

But this is not all that Savigny says, if we examine his treatise directly, and not at second hand.

Using for convenience Mr. Guthrie's translation of his "Private International Law," Edinburgh, 1880, I quote, Sec. 356, p. 118—:

"Further, the amount of moratory interest is to be determined according to the usual rate of interest in the locality at the time. Exactly in the same way, the amount of interest which a factor may charge on the cash he advances. In both passages it is not a local rule of law that is spoken of by which the rate of interest is there determined, but the rate of interest as it was at the moment in the money market of the 33
place. The reason of this rule was, that that interest was intended to give the lender a real compensation for the use of his money: which compensation could only be measured by the profit he could otherwise have obtained from the actual possession of it."

Citing L. 34, de R. J. (50–17), id sequamur, quod in regione in qua actum est, *frequentatur*, and L. 1, pr. de usuris, 22–1: usarum modus *ex more regionis* ubi contractum est constitutur.

(The italics are Savigny's or Guthrie's, not mine.)

And again, Sec. 370, pp. 210–211: 34

"The true rule is, that, failing a place of fulfilment fixed by the contract the debtor must fulfil just where he is sued (*ubi petitur*): so that it depends entirely on the choice of the plaintiff at what place he will enforce performance, provided of course, that he finds at the place where he chooses to enforce performance a forum which the defendant is bound to recognise."

And again, Sec. 372, p. 222:

"I hold, without hesitation, that the whole series of practical rules, as they have just been laid down in regard to the forum, also regulate the local law to be administered (§370). That therefore is, according to the different cases, to be referred to the following places (p. 209):—

I. When the obligation has a firmly-settled place of fulfilment,—to that 35
place of fulfilment.

II. When the obligation has arisen out of a continuous course of business carried on by the debtor,—to the place where this course of business has its permanent seat.

III. When the obligation has arisen from a single act of the debtor at his domicile,—to the place of this act, so that a future change of domicile makes no difference.

IV. When the obligation has arisen from a single act of the debtor away from his domicile, but under circumstances which raise an expectation that the fulfilment is to be in the same place,—to the place of this act.

V. When none of these conditions exist,—to the domicile of the debtor (*b*)." 36

Mr. Dicey contends strongly for the *lex loci solutionis*—the place of performance, as it is generally termed—but admits frankly that the cases do not bear him out, and that "to the correctness of this (my) conclusion many of my readers (of the American Law Review) will demur"—that the "decisions are not always consistent"—and that "the reports, no less than authoritative text books, *abound* with statements of the principle that a contract is governed by the place where it is made—*lex loci contractus*."

37

Prof. Bar, of Göttingen, also has sought a solution of this matter. He says:

"If in some foreign country where a subject of this country has an estate or a trading house, a higher rate of interest than ours is allowed and is in use by reason that capital is more scarce or the security is not so good, then the foreign lender, with whose money the estate has been improved or the trading concern extended, is entitled even in our courts to demand his higher rate of interest as was arranged. The restrictions on the rates of interest are local taxes upon the price of money. The opposite theory instead
38 of benefitting our citizens, would destroy their credit. * *

"It is of much more consequence whether the money lent has been expended here or abroad. In the first case the local limitations upon interest receive effect, but not in the second, for the interest is the price paid for the leave to spend the money. Thus, too, it is the law of the foreign country as to interest and not ours that decides a question where a native of this country lends another a sum for the improvement of an estate in a foreign country. On the other hand, our law on the subject must be applied if a foreigner lend one of our subjects money for the improvement of an estate in this country, or for the extension of a business carried on here.

"It is plain what an advantage this theory has over that which rests upon purely external characteristics, by which the laws of the place of performance or of the execution of the contract is applied in every case. The
39 application of our laws is fully insured, while they are not allowed, is to hamper foreign trade by their interference."

Bar International Law, §66.

Translated by Gillespie, Ed. 1883, pp 267—8.

And again, 371, p. 286–289:

"The obligation to pay interest, in so far as it rests upon special contract, depends, as we have already shown, upon the law of the country where the capital comes to be employed. That is the result of the definition of interest: "*Usura vicem fructuum obtinent.*" The capital of the creditor yields fruits when joined with property and personal exertions of the debtor; and of these fruits the creditor gets a proportionate share. It may be put in
40 this way, that the property and the labour of the debtor are the soil in

which that capital of the creditor brings forth fruit. As a rule, this operation takes place at the domicile of the debtor, but it may also take place in some other country, if the debtor has chanced to employ the money in carrying on trade abroad, or in cultivating an estate abroad. * * * *

"Many authorities lay it down that the law of the place where the contract is made will regulate the maximum interest that can be allowed; others maintain that if a place of payment is specified, the laws that are in force there must rule. These theories rest upon the assumption that the law which is to rule the obligation is simply determined by a voluntary submission of the parties. But if parties have not the power to take a foreign law at their pleasure as a rule of determination (as, for instance, two Prussians cannot at their pleasure adopt American law as the rule for a contract which they are concluding as to a subject situated in their own country), they are 41
just as much incapacited from doing this indirectly by choosing at their pleasure some other country for the place of performance, or for the conclusion of the contract. And even the adherents of this theory maintain the impossibility of choosing a foreign place for the performance, or the conclusion of the contract, in order to escape from the law of the country to which the parties belong.

"The place of performance is, however, like the place of the contract, so far of importance that from it may be inferred in what place the loan is really to be spent. *E. g.*, a native of this country contracts a loan abroad to meet the expenses of his stay there, and this loan is to be repaid during his stay abroad. The legality of the interest stipulated in this case must be determined according to the law of the foreign country. Conversely, if one 42
lends money abroad to one who is to keep it for a considerable time, and to continue to pay interest upon it after he has returned home, it may then be taken that the loan is to find its real application at the domicile of the debtor. Any agreement that may be made that the creditor is to receive repayment of capital and interest at his domicile, can certainly never determine the legality of the rate of interest.

In the last edition of Judge Story's Conflict of Law, by Bennett, (7th Ed.) the doctrine is thus summed up:

"And generally the *lex fori* will govern the allowance of interest for 43
delay of payment and the rate thereof, unless it be shown that the *lex loci contractus* requires a different rule. If the contract itself does not stipulate for interest, and there is no other contract, express or implied, for the payment of interest, but the only claim for interest is because of delay of payment after the principal is due, it is now *generally agreed* that the interest is to be computed according to the law of the place where the judgment is recovered, and not according to the place where the contract was made, *or where it was to be performed*, although it be affirmatively shown that the rate differs in those places from that where the remedy is sought. But if there is an express or implied agreement to pay interest, whether in the contract or out of it, although no rate be specified, the *lex loci contractus*, and not the *lex fori*, governs. It has sometimes been urged as an objection to 44
adopting the rule of the rate of interest in the jurisdiction where the action

is brought, when interest is claimed merely as damages for delay of payment, that it would allow the creditor to wait until he could find his debtor or his property within a jurisdiction where a much higher rate of interest is allowed than at the place of contract: but a debtor can always avoid this danger by performing his contract."

This practically, in our case, follows Prof. Bar, and fixes the *lex fori* as the law applicable to it, that is, the law of the country (So. Ca.) where the money was used.

Judge Story joins in the general regret at the unsettled
45 condition of the law. Secs. 297–298.

Mr. Wharton takes up the matter fully, and devotes several paragraphs of his recent work on the Conflict of Laws to it.

I print for convenience Secs. 504. 505, 506–510:

§ 504. The general import of the adjudicated cases, both in England and in the United States, is, that interest of this character is to be governed by the law of the place where the contract is to be performed.

46 § 505. But as to what is the place of performance in this sense, great divergence of opinion exists. It is often ruled, and in the facts of the particular cases properly, that it is the place of payment. But the place of payment is often designated from reasons of momentary convenience: and it seems hard to subject a *bona fide* creditor to forfeiture, simply because, in order to oblige the debtor, or to facilitate his own business, he inserts in the contract, as the seat of payment, a place (*e. g.*, a bank in some neighboring city, where the interest settled on by the parties may be usurious, and the contract void. The place where the money is to be paid has no necessary connection with the risks which the loan subjects it to, or the value of the money during the loan.

§ 506. Then it has been said that where no place of payment is mentioned in an obligation, the *Court will assume as such the residence of*
47 *the obligee*. But this would only entitle the money invested to receive the interest due at the obligee's residence: whereas, his object in sending it to another country was to obtain a higher interest, though at a greater risk. The obligor's domicil has been also assigned as the place of performance: but this is open to the objection that the obligor may employ the money in some distant country, and that the obligee is entitled to the interest prevailing in such country.

§507. More reasonable is the view maintained by Savigny, and substantially adopted by Mr. Parsons, that when there are too conflicting laws bearing on this point, that law will be adopted by which the validity of the obligation is best sustained. The applicability of a local law, it is argued, is based on the presumed consent of the parties; but parties cannot be presumed to consent to a local law by which their engagements would be made null.
48 And this seems to be the true reason of a much criticised decision of the Su-

preme Court of Louisiana, that in such cases there may be considered to be two applicatory local laws, and that the court will select that one by which the contract will be upheld.

§508. The true view seems to be, that the place of the performance of an obligation for the payment of money is the place where the money is used. 49
Suppose, for instance, it is to be used in the purchase of lands, or the working of mines in Colorado, where interest may be fifteen per cent. The money may be lent in New York; the contract executed in New York; and the payment designated to be made in a New York bank, But, for all this, the place of performance is Colorado, where the money is employed. The interest is great, but so is the risk; and the lender should have full remuneration for this risk. Similar reasoning applies to the bonds executed by Western railroads payable in Boston and New York. To declare such obligations usurious, because conflicting with the local law of the place of payment, would not only be a gross wrong to innocent and meritorious creditors, but a serious shock to national enterprise. Improvements in new countries would be slow, if capital should be exposed to such risks of forfeiture. It would be otherwise, however, if the rule be maintained that the place of performance (*i. e.* 50
the place that supplies the applicatory law) is that where the money lent is to be used. This view, it should be added, is maintained by Bar, and by a high French tribunal. It has, also, the sanction of an eminent Scotch court.

§509. Nor is this view unfamiliar to the Roman law. "*Usurae vicem fructuum obtinent;*" where the tree is, there properly is the fruit. It is true that this is regularly at the debtor's domicil. But if he goes to a foreign land, and uses his money there, applying it by his labor and skill to the realization of foreign staples, then the law of the place where the money is used is that which determines the interest. And this view derives support from parallel cases which the most eminent civilians have regarded as definitely settled.

§ 510. On this principle we may be able to reconcile the apparent conflict 51
of cases on the question whether, when a mortgage is given as security for a loan, and the mortgage is in one State and the place of payment of the loan in another, the law of the former State, or that of the latter State, is to prevail in the settlement of interest. This question has been frequently litigated in the United States, and with results which on their face are irreconcilable. The true test is, was the mortgage merely a collateral security, the money being lent primarily on the debtor's personal credit; or was the money employed on the land for which the mortgage was given. If the former be the case, then the law of the place where the money is due, and not that of the mortgage applies. If the latter, then the law of the place where the mortgage is situate must prevail. Hence, when an investment is made in a mortgage in Michigan, the note accompanying which is made payable in 52
New York, the law of Michigan and not of New York determines the question of usury.

APPLICATION OF THE ABOVE.

Turn now to the copy of the bond printed in the small addition to the record.

The promise is to pay the interest on the presentation of the coupons at the house of Palmer, Mackillop, Dent & Co., London.

But there is not one word of promise to pay interest on any unpaid coupons, or on the principal after the 12th January, 1866, when the bond fell due.

53 Interest on the overdue payments were not given by the contract, but are due *as damages* to the creditor for his debtor's default.

The law of the forum fixes the rate of these damages at the rate fixed for interest by its own law.

What other rate of *damages* can a court apply than that of its own forum?

The contract could easily have provided for the rate of interest after maturity by the common and usual formula, "with interest at the rate of five per cent., to be paid semi-annu-
54 ally, upon the first days of January and July, upon the presentation, &c., and upon all arrears of principal and interest, till the same, both principal, be fully paid." But the contract contains no such words.

Neither the *place for payment* nor *the rate of interest*, after maturity, is stipulated in this contract.

There is no provision—no appointment of an agent
55 in England on whom process could be served—by which Coghlan could enforce his rights in England.

"Hence the rule approved in Story's Conflict of Laws:

"If the contract itself does not stipulate for interest, * * but the only claim for interest is because of delay of payment after the principal is due; it is now *generally agreed* that the interest is to be computed according to the law of
56 the place where *the judgment* is recovered." Supra p. 11, f. 43.

And expressed by Savigny, as follows:

"The true rule is that failing a place of fulfillment *fixed by the contract*, the debtor must fulfil just where he is sued, (*ubi petitur.*)" Supra p.

And sanctioned by many of the decisions of this court; Argument in chief, pp. 23–27.

Would give to Coghlan the interest according to the law of South Carolina; and this, as shown in the main argument for appellant, pp. 13–17, ff. 48–66, is seven per cent.

57

So also would Savigny's second rule (Supra p. 9), viz: "When the obligation has arisen out of a continuous course of business carried on by the debtor, to this place where this course of business has its permanent seat."

The "permanent seat" of the business of the South Carolina Railroad Company has been South Carolina—the present forum—and only South Carolina from the day it was built to the present day.

58

And so also would the rule approved and so strongly urged by Prof. Bar and Mr. Wharton, that interest must be given according to the rate fixed by the country where the money is used—that of South Carolina, where the railroad was built with the funds derived from these bonds.

This latter rule, I confess, I think the rule that will reconcile nearly if not all the "inconsistent" decisions of courts and text books, and I sincerely hope this court will adopt it—though it is hardly for me to expect that a new *principle* will at once be recognized and declared upon one case.

59

It is sufficient for this case to ask that the *lex fori*, according to the decisions of this court, and the authority of the best text writers be applied to this contract, which originated and was completed in South Carolina, and which is secured by a mortgage, not made by the parties, but by a statute of the State of South Carolina. Is it to be supposed that any State voluntarily, by mere implication, surrenders its rules to those of a foreign government?

60

The words of the State endorsement, "provided that the interest to be recovered thereby, and made payable thereon,

shall not exceed five per cent. per annum;" on which my friend relies so much, applies only to interest before due.

"Those words cannot be applied to a period subsequent to the time the bonds are made payable, unless it be assumed that by inserting them the parties intended to provide against the contingency that the bonds should not be paid when due. It would be more reasonable to presume that in the insertion of terms fit and proper for that purpose, the attention of the parties was directed to the com-
61 pletion of the contract, with a view to its performance, rather than they were providing against the breach of it."

DeBruhl vs. Neuffer, 1 Strob., 130.

The contemporaneous construction is shown by the bond. The words in the endorsement on the bond expresses no more than the bond itself, and in no way provides for interest after the contract is violated.

62

VALUE OF THE POUND STERLING.

My attention having been called to Sec. 3 565 of the Revised statutes of the United States, I submit, in addition to what I have said in my argument in chief, that the value fixed by the statute of the United States, viz: $4 86 6½–10, should be decisive in courts of the United States, of a decree made while this statute is of force.

63

THE THREE COUPONS.

My friend says.

"We do not contend that this claim for interest due at the three periods named is barred by the statute of limitations, but it is a stale claim.

"It is a very singular fact that no reference is made to the
64 interest for these three periods of six months. If it had

been a matter discussed or relied upon or claimed below, it is quite impossible to suppose that some mention would not have been made of it in some one of the several decrees in the cause. If it had been simply overlooked the calling of it to the attention of the court would have insured an amendment of some kind of the decree in relation to it."

I shall not repeat what I have said about these coupons. 65

When my friend in his oral argument admitted that Coghlan would have recovered these coupons if he had sued at law, he admitted them entirely.

I have read somewhere "when the rigor of the law * * will undo a subject, then chancery tempers the law with equity," but I have never read that equity which follows the law will deny a just claim which the law admits.

The solution of the omission of these three coupons in the decree is difficult, perhaps. But the record shows the case was argued on 21st April, and decided 15th Dec., 66
1883. The lapse of eight months between argument and decision may account for it. If too, as is probable, the term had closed before counsel discovered the omission, redress was possible only by appeal in this court.

AS TO ESTOPPEL AND STALE CLAIM.

I have nothing to add to my argument in chief. 67

MINOR MATTERS.

My friend says: "The purchasers of the property under the foreclosure of the mortgage of July, 1868, took it subject to the lien of the appellant's mortgage bond, but only subject to that lien as modified by his dealings therewith and his express contract endorsed upon the bonds, and their rights can not be ignored." 68

The record shows that the purchasers of this property bought with Coghlan's claim before their eyes—not merely notice as *lis pendens*, but actually a part of the very proceedings under which they bought. In these proceedings alone could they learn of the dealings of Coghlan.

Trans., pp. 18, 24–25, 29–32, and 34–42.

He quotes *Scotland Co. vs. Hill, 132 U. S., 117.*

69 It does hold the *lex loci solutionis* as that regulating interest on over-due payments of interest. But then the bonds were not due till 1895, and naturally the coupons, as parts of the bond, partook of the nature of tne bonds. The rate agreed on was 9 per cent. New York, the *locus solutionis*, gave 7 per cent. Missouri, if really the *locus contractus*, gave 6 per cent. The court gave the highest rate.

U. S. Mortgage Co. vs. Sperry, 138 U. S., 336.

70 Gave interest on over due coupons according to the law of the State where the contract was executed, where it was made by the authority of the State (its court), and where the money was used. In fact the opinion, viz:

"Reasonably construed the appellants charter authorized it to contract for such rates of interest as were lawful in the state where the contract of loan was made and *where the property mortgaged to secure the loan* was situated * * What compensation is fair and just for the use of money borrowed, cannot well be determined upon principles alike
71 to all parts of the country. The *risk is much greater for the lender* and the amount the borrower can reasonably pay is larger in some localities than in others, &c., &c," p. 336,

Would indicate that the views of Prof. Bar and Mr. Wharton have received the attention and approval of the court.

It would make this argument too long to follow my friend through the cases and authorities he cites. Many of the cases bear out Bar and Wharton's idea, though the place
72 of performance may be given as the rule.

I have stated that the cases vary, and are inconsistent.

I have sought to give the *latest* opinions of text writers of acknowledged authority. Doubtless older editions, or rather extracts from the older editions, not altered in the new, vary from these.

"Incompetent Evidence." Though there were many objections to the testimony by both sides, none of it is ruled out by the circuit court; and all is now before this court as competent and proper, as neither side appeals on the ground. 73

"Coghlan's petition admitted as evidence 'against the protest of his present solicitor." Present solititor was not then solicitor, only of counsel; but there was no protest. Only proof was required, that Coghlan signed it and then it was let in on very slight testimony.

H. E. YOUNG, 74
for Appellant.

Charleston, S. C., 2d Nov., 1891.

James Lowndes
for Appellant.

Office Supreme Court U. S.
FILED.
OCT 21 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 47.

HENRY THOMAS COGHLAN, Appellant,

vs.

THE SOUTH CAROLINA R. R. CO. et al.

ARGUMENT FOR THE APPELLEE.

WM. E. EARLE,
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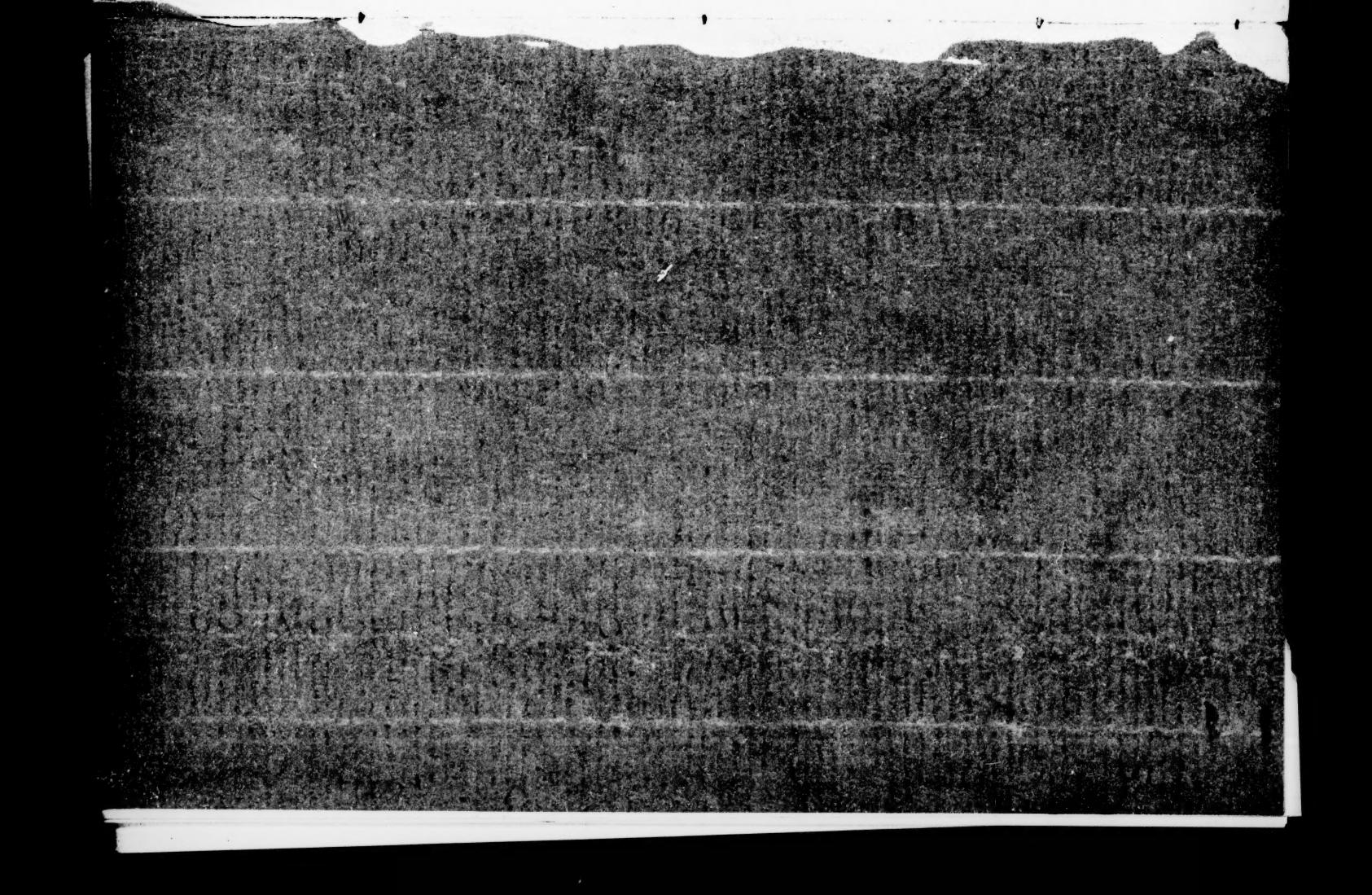

Supreme Court of the United States.

OCTOBER TERM, 1891.

THOMAS COGHLAN
vs.
THE SOUTH CAROLINA RAILROAD COMPANY. } No. 41

Summary of the Case.

The material question in this cause is whether the rate of interest on bonds after their maturity is that of the forum, or that of the place of performance. These bonds are payable, principal and interest, in pounds sterling "at the house of Palmers, Mackillop, Dent & Co., London," where they were sold, and my contention is that the English rate—five per cent.—is applicable. The appellant contends for the *lex fori*.

Disregarding the superfluous matter in appellant's statement of facts, there is no question that he proved:

Six bonds for £500 each with seven semi-annual coupons for £12 10*s* attached to each.

And twelve bonds for £250 each with seven semi-annual coupons for £6 5*s* attached to each. What the new bond extended is will appear hereafter.

These bonds were of the Louisville, Cincinnati and Charleston Railroad Company, and constitute a balance of the first lien on this property, perfectly secured, as the property has been purchased by present owners, subject to this debt, under foreclosure of subsequent mortgage.

The contract of the bond is: The company, under the guarantee of the State of South Carolina, promise to pay

to the bearer the pounds sterling stated in the bond, redeemable on 1st January, 1866, with interest thereon at the rate of five per cent. per annum from the date of the bond. The said interest to be paid semi-annually on the first days of January and July on presenting "the proper coupons for payment at the house of Palmers, Mackillop, Dent & Co., of London, where the principal will also be redeemed on surrender of this certificate." Endorsed on the bonds is the guarantee of the State of South Carolina, containing this proviso: "Provided, That the interest to be received thereby and made payable thereon shall not exceed the rate of five per cent. per annum."

Each of the bonds approved by appellant has endorsed thereon receipts for interest from July 1, 1868, to July 1, 1880, inclusive, a period of twelve years.

These seven semi-annual coupons, with the unpaid interest for July 1, 1866, were capitalized as shown by the receipts, making the £500 bonds £600 and the £250 bonds £300. Interest was paid on these bonds as thus increased beginning July 1, 1868, as appears by the receipts on the bonds and the separate receipts given to the receiver up to the time this suit was begun. (See ff. 202–209, pp. 81–84.) For the interest due January and July, 1867, and January, 1868, there are no receipts. We contend that it was paid; but more as to them hereafter.

The first receipt on the bonds, which were originally for £500, is as follows:

"13th *April*, 1869.

"Paid on this bond £15, half-yearly dividend due 1st July, 1868, *as if it had been exchanged for a new bond.*"

And the receipts continue "ditto" on the face of the bond until the receipt of interest due 1st January, 1870, when on the back of the bonds the first receipt is:

"7th *July*, 1870.

"Paid on this bond £15, half-year's dividend due 1st July, 1870, *as if it had been exchanged for a new bond.*"

And the receipts for interest so continue "ditto" until Mr. Fisher, the receiver of the road, commenced to pay the interest, when payments were stamped on the bond as follows:

"Paid £30 sterling, interest due July 1, 1878, and January, 1879, on this bond."

And so continue until the payment of interest July 1, 1880, inclusive. Similar in every respect are the interest receipts on the twelve original £250 bonds, save as to the amount of the six months' interest, which was £7 10*s*.

This endorsement on the bonds is explained as follows by Mr. Wilson, treasurer of the company (R., 73, f. 186):

"Q. (Hands bonds to witness.) Will you examine these bonds and receipts and state how it is about the eight overdue coupons when the bond has but seven and what was done by the road in the exchange of those bonds?

"A. That matter is very clear. The bond has but seven, but the last coupon matures on January 1, 1866, and the renewal is on July 1, 1866, so it carried six months' interest, equivalent to eight coupons.

"Q. And that would make how many pounds?

"A. That would make exactly 100 pounds on the £500 bonds and 50 pounds on the £250 bonds."

Mr. Fisher says (p. 30):

"I received an order from the court ordering me to pay the interest on the Louisville, Cincinnati and Charleston Railroad bonds, guaranteed bonds and first mortgage bonds. I then wrote Baring Brothers, and remitted them the money, instructing them to do so, and sent them a copy of the order of the court; and to take duplicate receipts and stamp on all matured bonds the interest paid up to the time it was paid; after that they were to send me either the receipts or the coupons that were paid; of course they took receipts on the Louisville, Cincinnati

and Charleston Railroad bonds, and the receipts were returned to me." (fol. 173, p. 67.)

"I paid on each £500 bond interest on £600, and on the £250 bonds I paid interest on £300. I did that because I was informed by Mr. Burdell and other parties connected with the road that it had been done years before. Capitalizing the interest as of the 1st July, 1876, and treated them as £600 bonds at five per cent. interest, and the £250 bonds as £300 bonds at five per cent. interest." (fol. 175, p. 68.)

The receipts taken by Mr. Fisher, the receiver, have been proved in the cause. All are of the same tenor save the amounts of interest and dates, and are as follows:

"LONDON, ENGLAND, *February* 4, 1880.

"Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due July 1, 1879, on bonds of Louisville, Cincinnati and Charleston Railroad Company of £500 each, with eight overdue coupons attached, *representing six hundred pounds sterling*, and numbered respectively as follows: 18 to 23, both inclusive. H. T. COGHLAN."

The others are signed by Martin & Co., who were Coghlan's agents (fols. 204, 205, 206, 207, 208, 209; pp. 82, 83, 84).

Prior to all these receipts for interest at five per cent., on the 23d April, 1867, Coghlan demanded payment of his bonds at the house of Dent, Palmer & Co., in London, through a notary, and the notary protested "as well against the State of South Carolina as all others whom it may and doth concern" (p. 57, fol. 146, 147).

After this protest he received the interest and made no demand for payment of his bonds until August 28, 1880, a period of over thirteen years.

In answer to the fifth cross-interrogatory (p. 100, fol. 248) addressed to Mr. Coghlan—"Did you ever demand interest

at the rate of seven per cent. from the railroad company or its agents on your past-due bonds stated in the complaint, or arrearages of interest at that rate?" He replied:

"That the only demand which has ever been made by me or on my behalf of interest at the rate of seven per cent. on the said bonds was through and in the shape of the said complaint, which was filed by Mr. T. Bacot as my solicitor" (complaint filed August 28, 1880, p. 2, fol. 2).

Mr. BURDELL, the bookkeeper, testifies (R., 76):

"Q. Will you be kind enough to state how it is that those receipts call for eight overdue coupons when the bond has but seven coupons on it?

"A There are seven coupons on the bond, and the eighth coupon is represented by the last six months' interest.

"Q. When the attempt was made to exchange by the substitution of new bonds for the old bonds was the interest upon those bonds of Louisville, Cincinnati & Charleston Railroad capitalized?

"A. Yes; the £500 bonds became £600 bonds, and the £250 bonds became £300 bonds.

"Q. Do you remember at what time they were sent over to exchange?

"A. That was before I went to the road.

"Q. Will you explain this: 'Paid on this bond £15, &c.' What ought that new bond to have been?

"A. That was upon the new capital of £600, capitalizing those so-called eight coupons.

"Q. Then to the parties who would exchange Louisville, Cincinnati & Charleston R. R. bonds that had matured in 1866 new bonds for £600 were given drawing 5 per cent. interest?

"A. Yes, and had been given to a great many.

"Q. Those to whom it had not been given keeping the old bond with that endorsement?

"A. Yes.

"Q. As if the interest had been capitalized and the new bond given for that amount?

"A. Yes."

The testimony shows that the company's understanding was that he accepted the 5 per cent. in full of his interest on the bonds with the overdue interest capitalized. The receiver paid the 5 per cent. as interest, and not as moneys on account.

With all this spread upon the record, the purchasers bought the property subject to Coghlan's prior lien as bearing 5 per cent. interest and the interest paid up to July 1, 1880, as he himself had stated. The State's indorsement to which Coghlan was tenaciously clinging expressly provided that the rate of interest should *not exceed the rate of five per cent. per annum*, as was shown by the Act of Assembly printed on the bonds.

From the maturity of the bonds, January 1, 1866, up to August 28, 1880, appellant made no demand for seven per cent. interest.

Prior to the receipts for the five per cent. interest, to wit, on April 23, 1876, appellant demanded payment of the principal at the house of Dent, Palmer & Co., and protested for non-payment. Thereafter he received the interest and made no further demand for payment of his bonds until March 28, 1880.

The plaintiff in error attempts to avoid the agreement to accept five per cent. interest "as if it had been exchanged for a new bond," and his acting on that agreement from April 13, 1869, to the filing of the complaint herein (on August 28, 1880), by asserting that it was accepted upon condition that it should not be regarded as a waiver. To prove this he relies upon the correspondence between himself and his agents, Messrs. Martin & Co., whereof no notice whatever is brought home to the company and by which it is not bound. This correspondence shows, however, that the plaintiff in error feared his acceptance of interest "as if it (his bond) had been exchanged for a new bond" might be treated as a

release of the liability of the State on her guarantee. If this effect was avoided he was more than willing not only to accept the five per cent. interest, but also to enter into contract to accept it on the bond just "as if it had been exchanged for a new bond," he retaining the old bond *merely to preserve the State's guarantee.*

I annex a summary of this correspondence, with references to the record where the letters may be seen.

Dent, Palmer & Co., on 22d March, 1869, notified Martin & Co. that they were instructed to pay a half year's interest due July, 1868, on the new bonds and a similar payment on old bonds not exchanged. This circular letter was enclosed to Mr. Coghlan. (P. 58, fol. 148, 149.) (The letter of Mr. Coghlan in reply thereto, 24th March, 1869, which might have explained fully his views held at that time, seems to be the only one a copy of which he could not find.) (P. 99, fol. 247.)

On the 29th March, 1869, Martin & Co. write Coghlan "that Dent, Palmer & Co. tell us they have no authority to say State refuses to exchange old bonds for new bearing State's guarantee. It must be borne in mind the guarantee is given at a different period of State's existence. Dent, Palmer & Co. consider the receipt of July dividend will not commit you. We would not undertake to express any opinion as to the powers of the new guarantee. You had better consult a solicitor on this point." (P. 58, fol. 150.)

On the 30th March, 1869, Coghlan asks Martin & Co. to favor him with a copy of the new bond with guarantee by State; and on the same day Martin & Co. write him that Dent, Palmer & Co. can not give a copy, having none in their office; and that Dent, Palmer & Co. say they can not guarantee that the bonds to be issued hereafter shall be the same as those issued up to this time. (P. 59

fol. 151, 152.) The next day, March 31st, Coghlan writes his agent: "I have been informed right that the State is unable at present to give the guarantee to the new bonds. *This makes it important that I should do nothing that would affect my protest of the old bonds, so if accepting the interest now offered would do so, don't apply for it, but otherwise should of course be glad to have it.*" (P. 59, fol. 153.)

On the 31st March, Martin & Co. write Coghlan, "Dent, Palmer & Co. do not think by receiving the dividend declared on the new bonds, you will affect protest on the old ones; but as they are merely agents for the State we should say it was more a lawyer's question." (P. 59, fol. 154.)

After his solicitor's expression of opinion that receiving a dividend on his bonds would not interfere with his right to recover the overdue ones, and a letter from Martin & Co. to him to the effect that Baring Bros. decline to have anything to do with enforcing payment against a State, because it could not be done, Coghlan expresses the hope to Martin & Co. that they have applied for the arrear of interest and bonds, and on the 13th April, 1869, Martin & Co. notify him that they have received and credited his account with the half year's dividend on the South Carolina Railroad Bonds. (See letters March 31, 1869, Martin & Co. to Coghlan; April 5, 1869, Coghlan to Martin & Co.; April 7, 1869, Martin & Co. to Coghlan; April 8, 1869, Coghlan to Martin & Co.; April 13 and 14, 1869, Martin & Co. to Coghlan.) (P. 60, fol. 155; p. 60, fol. 156; p. 61, fol. 157; p. 61, fol. 158; pp. 60 and 61, fols. 154, 155, 156, 157, 158.)

And on that day, 13th April, 1869, when Martin & Co. presented the bonds to collect the interest, there was written on each bond, as before stated, "Paid —— dividend, due July 1, 1868, as if it had been exchanged for a new bond"; and so the receipts continued to be given. (See copies of bonds.)

ARGUMENT.

There is no dispute as to the legal proposition that after the maturity of the bonds on January 1, 1866, the defendant became liable for interest at the legal rate, and that only; or for such rate of interest as the parties may have agreed to.

The appellant's contention, however, is that it was the legal rate of South Carolina, and that the payments of interest made were merely partial payments made on account.

The appellee submits the general proposition that this is essentially an English contract, and that the *lex loci contractus* must govern, and that the proof shows not merely a condition of things from which the court must infer a contract, but the evidence establishes a contract to accept and treat the eight semi-annual payments as funded and to receive five per cent. interest on the whole, which has been done for thirteen years.

It is laboriously argued for the appellant that the question whether the rate of interest after maturity, when the contract is silent in relation thereto, is an open question; and it is urged that "the place where the money is used" is a deciding factor upon that issue.

The Law of the Place of Performance Governs.

We submit that the adjudicated rule is that "interest is to be paid on contracts according to the law of the place where they are to be performed; where interest is expressly or impliedly to be paid."

In Andrews *vs.* Pond (13 Pet., 78), the suit was on a bill of exchange drawn in New York and payable in Mobile, Alabama, on which ten per cent. had been added as exchange. It was a question whether this was not a cover for usurious interest, and it became material

whether the contract was governed by the laws of one State or the other; for if by those of New York, they made void an instrument tainted with usury. Mr. Chief Justice Taney, delivering the opinion of the court, said:

"The general principle in relation to contracts made in one place to be executed in another *is well settled.* They are to be governed by the law of *the place of performance.*

This rule is quoted with approval by this court in the recent case of Scotland County *vs.* Hill (132 U. S., 117). The coupons in the suit and the bonds to which they belonged were issued by a County of Missouri and made payable at the Farmers' Loan and Trust Company in the city of New York, and this court, speaking by Mr. Justice Harlan, held that in a suit in Missouri the New York rate of interest governed upon the past-due coupons up to the time of judgment, and that thereafter the rate of interest of Missouri attached upon the judgment rendered. And this was clearly upon the principle that interest from maturity to judgment was of the substance of the obligation and depends upon the law of the contract as of the place of performance; whilst interest after judgment is a part of the remedy depending upon the law of the forum.

In U. S. Mortgage Co. *vs.* Sperry (138 U. S., 336), money was loaned in Illinois at a higher rate of interest than is authorized in New York, and by a corporation of the latter State expressly prohibited by its charter from lending money "at a rate of interest exceeding the legal rate," and you held that *the legal rate* referred to in the charter is the rate established by the law of the place *where the contract of loan is made*, and you say that this view is supported by those decisions in New York which hold in respect to loans made in other States, that the rate of inter-

est allowed by the State where the contract of loan is made will be respected by the courts of New York. Then undoubtedly if the courts of New York, notwithstanding a contract is usurious under New York laws, will uphold it on the ground that it is lawful where contract of loan was made, surely it must upon the same principle enforce the rate of interest of the State where the loan-contract was made after the loan has matured. In this case you followed the law of the State "where the contract of loan was made," and refused to allow any interest on the past-due coupons.

"The law of the place where a contract is made governs its nature, obligation, and interpretation unless it appears that the parties when entering into the contract intended to be bound by the law of some other country." This is the rule laid down by this court in the Liverpool and Great Western Steam Co. *vs.* Phœnix Insurance Co. (129 U. S., 397) after a most careful consideration of the authorities, both English and American.

In Peyton *vs.* Heinekin (131 U. S., appendix ci) a suit had been brought in the United States circuit court for Tennessee upon a contract of a commission merchant in New York to sell flour for a Tennessee customer to repay advances "with commission and interest out of the sales, the rate of interest is to be determined by the laws of New York, *the place of performance.*"

On a promise to pay money the place at which the payment is to be made is that *of the performance* (Law Rep. 1 C. P., 340; 22 Wend., 215; 32 Vt., 361; 1 W. Bl., 234, 256, 258; 5 Saw., 32; 1 Q. B., 43; 5 McLean, 448). Thus a bill drawn in one country and *payable in another* can be discharged in the money of *the latter only* (1 Car. & P., 286; 2 Beav., 282).

Chancellor Kent says (2 Com., 460) that if "money be payable at a given time in a different territory, and there

be default in payment, the law of the place of payment regulates the allowance of interest, for the default arises there." This is also the trend of English decisions (see Copper *vs.* Earl of Waldegrave, 2 Beavan, 282).

Edwards on Bills and Promissory Notes, 714: Where a note is expressly made payable in another State the parties are supposed to have had reference to the law of the place where payment is to be made. A note drawn payable with interest in a particular state bears the rate of interest established by law at the place of payment (see Smith *vs.* Smith, 2 John., 235; Hasford *vs.* Nichols, 1 Paige Ch., 220).

Idem., 719: Where interest is not recoverable on a contract by virtue of any express stipulation contained in the instrument, but is allowed by way of damages for delay in making payment, the law of the place of performance silently furnishes the rule of compensation (Story Conflict of Laws, 296). Ordinarily the rate of interest established at the place of payment indicates most accurately the measure of damages arising from the default (see Pecks *vs.* Mayo, 14 Vt., 33).

Idem., 722: In an action on a foreign contract, such as a note payable in another State, the foreign interest is to be calculated on it until the day of recovery; after that it bears interest under the law of the State where judgment is entered (see Peacock *vs.* Banks, 1 Minor, 387; Cooper *vs.* Sandford, 4 Yerger, 452).

Robinson *vs.* Bland, 2 Burr., 1077: A bill of exchange drawn in France for money lent there payable in England bears *English interest*. The same rule is followed in this country (4 Johns., 285; 2 *id.*, 235; 3 *id.*, 263; 2 John. Cas., 355).

Parties contracting in a State whose laws make void a promise to pay more than a certain rate of interest may there lawfully bargain for more payable in another State where the higher rate is lawful (12 Wall., 226; 5 Coldw., 497; 1 Sm. & N., 176; 5 Heisk., 14, 16; 22 La. An., 418; 1 Wal., 298; 7 Paige, 615; 7 Jones N. C., 506; 29 Ind.,

158; 22 Iowa, 194; 21 Wis., 340; 11 Sm. & M., 140; 2 McAr., 371; 93 U. S., 344).

The notes were given in Louisiana, but were made payable and indorsed in Mississippi; consequently they are governed by the law of Mississippi. "The law of the place *where a contract is to be performed*, and not the place where it was executed, applies" (Brabston *vs.* Gibson, 9 How., 277).

> See Wharton's Conflict of Laws, Sec. 505; Story's Conflict of Laws, Secs. 280, 291–7; Rorer on Interstate Law, 51, 65; Dickinson *vs.* Edwards, 77 N. Y., 575.

Defendant being indebted to plaintiff, gave bond for the amount in sterling to be paid in Ireland: *Held* that the debt was due and payable in British sterling, but to carry Irish interest where payable (Bushby *vs.* Camac, 4 Wash., 296).

In a suit on bonds issued by a Canadian corporation, payable in New York: *Held* that New York is the place of performance, and that the contract is governed by New York law (Gebhard *vs.* Canada Southern Railway, 17 Blatch., 417).

Where bills of exchange payable in London are accepted on promise to provide funds there for payment, the contract is governed by the law of England as to obligation, rate of interest and rule of computation (Bainbridge *vs.* Wilcocks, Bald., 537).

Where a debt is payable at a certain time and place the rate of interest is to be regulated by the law of the place where payable (Huss *vs.* Kempf, 10 Ben., 364).

Bills were drawn in Augusta, Georgia, on Charleston, South Carolina, and this court held that they were drawn with reference to South Carolina "for the execution of the contract" and were "entitled to South Carolina interest" (Boyce *vs.* Edwards, 4 Pet., 123).

In Bank *vs.* Daniel (12 Pet., 55) a bill was drawn and accepted in Kentucky but payable at a bank in New

Orleans, and this court held that "the *place of payment* being within a jurisdiction foreign to Kentucky, subjected the acceptor to the performance of the contract according to the laws of Louisiana."

As these bonds and coupons payable to bearer have the legal incidents of commercial paper, they carry interest after maturity just as commercial paper does and upon the same principles and for the same reason. Then the rate of interest which they carry after maturity must be fixed in the same manner. In the leading case of Gelpcke *vs.* Dubuque (1 Wall., 206) you said that a party recovering on coupons "will be entitled to the amount of them, with interest and exchange at the place where by their terms *they were made payable.*" And in Pana *vs.* Bowler (107. U. S., 529) you said "the coupons after their maturity bore interest at the rate fixed by the law of the *place where they were payable.*"

Instead of being an open question, this seems to be absolutely *res judicata*, in express terms and upon well-settled principles. This rule must apply to bonds and coupons payable in pounds sterling at a banking house in London, England.

"The time, manner, and circumstances of presentation for acceptance or protest, *the rate of interest* when this is *not specified* in the bill (Young *vs.* Harris, 14 B. Mon., 556; Parry *vs.* Ainsworth, 22 Barb., 118) are points connected with the payment of the bill, and are also instances to illustrate the meaning of the rule that the place of *performance* governs the bill."

Scudder *vs.* Union National Bank, 91 U. S., 412.

It is somewhat curious that my friends make a quotation from this case (on page 26 of their brief). An examination of the opinion of Justice Hunt, however, will expressly show that in the quotation he is speaking exclusively of the *acceptance*, and we do not question the prop-

osition that in questions as to *sufficiency of the acceptance* the law of the expected place of performance, should there be a difference, yields to the *lex fori* and the *lex loci contractus.* This and the extract from Wheaton on Conflict of Laws and copied *supra* (and also in my friends' brief) are exactly upon the point of the distinction drawn by Justice Hunt, viz., that questions as to the acceptance are governed by the law of the place of acceptance, and that questions as to performance are governed by the law of the place of performance.

The first case cited by my friends under this quotation is Miller *vs.* Tiffany (1 Wall., 310). This was a bill in equity filed in Indiana to foreclose a mortgage made in Indiana to secure a note payable in Ohio, for goods bought in New York, with a higher rate of interest than was lawful in either Indiana or New York. The defense was usury, and Mr. Justice Swayne, speaking for you, rejected the defense on the express ground that the contract is governed by the law of the place of performance, and he quotes as authority therefor from the cases of Andrews *vs.* Pond (13 Pet., 78) and Chapman *vs.* Robertson (6 Paige, 634), both of which are also cited by my friends.

I desire in this connection to invite special attention to the following extract from Wheaton copied on page 26 of appellant's brief. It is quoted with approval in the above cited case of Scudder *vs.* The Union National Bank:

"Obligations in respect to the mode of their solemnization, are subject to the rule *locus regit actum*, in respect to their interpretation to the *lex loci contractus*, in respect to *the mode of their performance* to the law of *the place of their performance.* But the *lex fori* determines when and how such laws when foreign are to be adopted, and in all cases not specified above supplies the applicatory law."

Wheaton, Conflict of Laws, Sec. 401.

On page 27 of appellant's brief is the following:

"So if a note payable in New York be given in the State of Illinois for money *there lent*, reserving ten per cent. interest, which is legal in that State, the note is valid, although but seven per cent. interest is allowed by the laws of the former State."

Miller *vs.* Tiffany, 1 Wall, 310;
Depeau *vs.* Humphrey, 20 How., 17;
Chapman *vs.* Robertson, 6 Paige, 634;
Andrews *vs.* Pond, 13 Pet., 65.

This extract is correctly quoted from the opinion in Scudder *vs.* Union National Bank, but clearly there is some mistake about it. That case does not involve the question stated in what is quoted, nor does either the case of Miller *vs.* Tiffany or Andrews *vs.* Pond, both whereof I have quoted herein. Both Chapman *vs.* Robertson (6 Paige, 627) and Depeau *vs.* Humphrey (20 Martin, La., 1) (there is no such case in 20 How.) as well as Andrews *vs.* Pond are referred to in a note to 2 Parsons on Contracts, 584, and it is perfectly evident that they only decide "that if the interest allowable at the place of payment be larger than that where the note is made or the bill is drawn, the parties may stipulate for the higher rate of interest." And Parsons adds: "But if no interest be expressed, then the interest will be measured by the law of the place where the note is payable." And he quotes from the opinion of Justice Redfield in Peck *vs.* Mayo (14 Vt., 33): "If the contract so entered into (in one country to be performed in another) stipulated for interest generally, it shall be *the rate of the place of payment*," unless it appears they intended to contract differently; and "if the contract be entered into for money payable at a place at a day certain and no interest be stipulated, and payment be delayed, interest by way of damages shall be allowed *according to the law of the place*

of payment.". It is unquestionably "interest by way of damages" that appellant is now entitled to have.

On page 589 Parsons, writing of contracts made in one place to be performed in another, says: "Then, in general, although perhaps not always and for all purposes, the place of payment or performance is the place of contract." The illustration he uses is a note made in New York payable at Boston, and he says: "It must, wherever signed, conform to the laws of Massachusetts in respect of interest, and would therefore be usurious there if it bore more than six per cent., although not usurious at New York, where it was made." Among the authorities cited in support of this are Andrews *vs.* Pond, which we have just examined, and Robinson *vs.* Bland (2 Burr., 1077), in which Lord Mansfield says as to a bill of exchange drawn in France upon the drawer: "The law of the place [meaning France] can never be the rule where the transaction is entered into with an express view to the law of another country as the rule by which it is to be governed."

Appellant places so much stress upon the case of Goddard *vs.* Foster (17 Wall., 143) that he twice cites it. But an examination of the elaborate opinion by Mr. Justice Clifford shows that it relates almost exclusively to other questions and that all which relates at all to interest is embraced in the following paragraph, from which it is apparent that the rule of the *lex fori* governs solely because no rate was fixed in the contract and *no place designated for the performance of the agreement:*

"Beyond all question the plaintiff was entitled to interest from the commencement of the suit, and it is not perceived that there is any error in the rule prescribed as to the rate, as it is the rule of the *lex fori*, especially as no rate is fixed in the contract and no place designated for its performance."

The necessary logical inference is, that if there had been a "place designated for its *performance*," then the rule of the *lex fori* would not have been applicable.

In Cox *vs.* United States (6 Pet., 203), a suit on the official bond of a navy agent, this court cites this decision of Lord Mansfield, and says:

"The general rule on this subject is well settled; that the law of the place where the contract is made, and not where the action is brought, is to govern in expounding and enforcing the contract unless the parties have a view to its being executed elsewhere, in which case it is to be governed according to the law of the place where it is to be executed."

In his elaborate consideration of the judiciary act Mr. Chief Justice Marshall said as to section 34, that it "is the recognition of universal law; the principle that in every forum a contract is governed by the law with a view to which it is made." (Wayman *vs.* Southard, 10 Wheat., 48.) This case is cited and this principle in this language adopted in the case of Pritchard *vs.* Norton (106 U. S., 136) as follows:

"The phrase '*lex loci contractus*' is used in a double sense to mean sometimes the law of a place where a contract is entered into, sometimes that of the place of performance. And where it is employed to describe the law of the seat of the obligation it is on that account confusing. The law we are in search of, which is to decide upon the nature, interpretation, and validity of the engagement in question, is that which the parties have either expressly or presumptively incorporated into their contract as constituting its obligation. It has not been better described than it was incidentally by Chief Justice Marshall in Wayman *vs.* Southard."

In Pritchard *vs.* Norris is illustrated the thorough work and the wonderful discriminating analysis of the lamented justice who wrote it. I beg to refer especially to this

case, where all the leading authorities—English and American, State and Federal—are considered, and I need not trespass on you with other citation.

Mr. Coghlan's Alleged Ignorance.

There is a strenuous effort to make this appear to be a case in which the appellant has acted in ignorance—ignorance of the facts, but especially of the law, and more particularly that his rights rest upon his ignorance of a foreign law. The appellant, a gentleman "who is neither a lawyer nor a business man." This position of ignorance of the law is attempted to be built up by the incompetent evidence of the correspondence between the appellant and his agents, Martin & Co., no notice or knowledge whereof was in any wise brought home to the appellee. But let us see the actual outcome of the facts:

The endorsement on the bonds, to-wit: "Paid on this bond £ as if it had been exchanged for a new bond," is explained as follows (fol. 187, p. 74):

Mr. Wilson, the Treasurer of the company, says (p. 38): "The seven coupons on the bonds, together with interest due July 1st, 1866, made £100 interest on the £500 bonds, and £50 interest on the £250 bonds, and that "the attempt to make the exchange of the bonds guaranteed by the State was not in all cases carried out" (fol. 186, p. 73). In the cases exchanged the £500 was converted into £600, and the £250 into £300.

Mr. Burdell, the bookkeeper, (p. 42), gives a similar explanation, and says that to the parties who exchanged bonds similar to complainant's new bonds for £600 were given, drawing five per cent. interest. Those to whom the new bonds had not been given keeping the old bond with the indorsement as above, that is, "as if exchanged for a new bond" (fol. 191, p. 76).

These facts show that Coghlan either contracted to take

interest at five per cent., as if the bonds had been exchanged for new bonds, or to continue and extend the contract rate at five per cent. on the old bonds, capitalizing the unpaid coupons and the six months' interest due July, 1866, equivalent in all to eight coupons, making the principal of the bonds £600 and £300 respectively.

But still further:

On March 30, 1869, Coghlan asks Martin & Co. to favor him with a copy of the new bond with the guaranty of the State, and on the same day Martin & Co. write him that Dent, Palmer & Co. can not give a copy, having none in their office, and that Dent, Palmer & Co. say they can not guarantee that the bonds to be issued hereafter shall be the same as those issued up to this time. The next day, March 31, Coghlan writes his agent: "I have been informed right that the State is unable at present to give the guarantee to the new bonds. *This makes it important that I should do nothing that would affect my protest of the old bonds, so if accepting the interest now offered would do so, don't apply for it, but otherwise should of course be glad to have it.*"

On March 31 Martin & Co. write Coghlan: "Dent, Palmer & Co. do not think by receiving the dividend declared on the new bonds you will affect *protest on the old ones:* but as they are merely agents for the State we should say it was more a lawyer's question."

Now this does not look like the course of the factitious ignoramus attempted to be built up and presented in the argument of this case.

Mr. Coghlan desired to avoid any prejudice to the protest of his original bonds. He wanted his interest, but he did not propose in any wise to impair his security in the State's endorsement of his new Louisville, Cincinnati and Charleston R. R. bonds by taking any new

South Carolina R. R. bonds. He consulted his solicitor.

After his solicitor's expression of opinion that receiving a dividend on his bonds would not interfere with his right to receive the overdue ones, and a letter from Martin & Co. to him to the effect that Baring Bros. decline to have anything to do with enforcing payment against a State because it could not be done, appellant expresses the hope to his agents, Martin & Co., that they have applied for the arrears of interest and bonds, and on April 13, 1869, Martin & Co. notify him that they have received and credited his account with the half year's dividend on the South Carolina railroad bonds. (See letters—April 5, 1869, Martin & Co. to Coghlan; April 5, 1869, Coghlan to Martin & Co.; April 7, 1869, Martin & Co. to Coghlan; April 8, 1869, Coghlan to Martin & Co.; April 13 and 14, 1869, Martin & Co. to Coghlan.)

And on that day, April 13, 1869, when Martin & Co. presented the bonds to collect the interest there was written on each bond, as before stated, "Paid——— dividend, due July 1, 1868, as if it had been exchanged for a new bond"; and so the receipts continued to be given.

From the 1st January, 1866, to 28th August, 1880, a period of more than fourteen years, Mr. Coghlan failed to make any demand for interest at the rate of seven per cent.

Thus he effected a "straddle." He retained the original endorsement unimpaired, about which he was particularly solicitous, and he got his present interest, as he was desirous of doing, and he was paid five per cent., which deliberately and with full knowledge of the facts he was perfectly willing to receive. He acquiesced in and continued to accept and act upon this arrangement for thirteen years. And Mr. Coghlan, who manifests considerable versatility in testifying as well as in changing his attorneys, is not heard to make moan until after he

had filed and withdrawn his petition, which was offered in evidence (R., p. 78, f. 196) and after the receiver had been appointed in 1878, when he wanted seven per cent. (R., 76, f. 192.)

The appellant's caution in this whole business is conspicuous, but that he freely accepted the rate of interest and that his anxiety was confined to the danger of releasing the State's guaranty is further shown.

By his protest against the State, and

By his petition filed in this court, where he says:

"In 1868 the company sent a special agent to propose a fresh arrangement of the debt, to substitute other bonds of the company for the bonds which had the endorsement of the State, and in their circular state that the effect of the exchange would be to relinquish the guaranty of the State for the principal and interest of the bonds. That he declined to surrender his bonds and so relinquish the guarantee of the State; and that the railroad company has since from time to time *paid the interest due on these bonds from* July 1st, 1868 to July 1st, 1879."

Martin & Co. held the bonds and collected the interest for Coghlan, notified Coghlan that they had received his interest, and that it consisted of five per cent. on his bonds and the capitalized overdue interest (R. 16, f. 159).

Mr. Coghlan in his petition filed March 18, 1880, in this court, which was prepared and signed by him, states: "And the railroad company has since from time to time paid the interest due on these bonds from July 1, 1868, to July, 1879" (R. 79, f. 198).

In his letter to Mr. Fisher of September 13, 1879, he calls attention to the *seven* coupons attached to his bonds and the overdue bonds, and furnishes Mr. Fisher with a copy of the guaranty of the State. He does not complain of the rate of interest, but still harps on the State guaranty.

Dent, Palmer & Co. wrote Martin & Co. that they were ready to pay appellant's interest, and appellant was apprehensive that the receipt of interest (Now, why? Clearly because it was to be five per cent.) "would affect my protest of the old bond," and this evidently is what he wrote about to Martin & Co. on the same day, and it was not whether "the receipt of the July, 1868, dividends will commit me in any way," as stated in his brief.

An Executed Contract.

But it is immaterial what the appellant thought or says he thought; immaterial what Martin & Co. wrote him their opinion was, and equally so what Martin & Co. wrote appellant that Dent, Palmer & Co. thought. His solicitor wrote him "it wont affect your right to recover the overdue ones" (*bonds* they were writing about). The fundamental question is not what appellant wrote Martin & Co., but what he really endorsed on the bonds. That writing speaks for itself. That needs no interpreter. It is "paid on this bond £15, half year's dividend due," etc., 'as if it had been exchanged for a new bond." That is an executed contract. It is free from ambiguity. It is clear and explicit. It is an entirety and speaks for itself. It is a receipt for £15—a good consideration certainly—for a "half year's dividend." It tells its own story, and the whole of it. Nothing can be added to it. It is absolutely clear that the appellant fully understood this at the time, for on April 13, 1869, Martin & Co. write to him (R., 61, f. 158): "We have received and credited your account with £175.10, *being half year's dividend* on your S. Carolina Railway bonds." And the next day in explanation they write him further: "The £175.10 consists of 5 per cent. on your £6,000 bonds for one-half year and one-fifth of the interest which is due to you *on the capitalized overdue interest.*"

His own testimony and the whole correspondence shows that Mr. Coghlan's reason for not surrendering the old bonds in exchange for the new ones was that he did not wish to give up the State's original guarantee on the original obligation. He had protested the State for non-payment, and was nervously apprehensive about impairing the validity of that protest. But he receipted for the interest as if it had been exchanged for a new bond. Those words clearly had a well-defined and well-understood meaning. The original bonds matured July 1, 1866, and the new bonds were prepared and dated "July 2, 1866," because the first day came on Sunday, but it was apprehended that the constitution then of force did not empower the State to guarantee the bonds. Mr. Coghlan says (f. 197):

"In the year 1868 the S. C. Ry. Co. sent a special agent to this country to propose a fresh arrangement of the debt., viz., to substitute other bonds of the company for the bonds which had the endorsement of the State of South Carolina, and in their circular state that the effect of the exchange would be to relinquish the guarantee of the State of South Carolina for the principal and interest."

He further states in the next folio "that your petitioner declined to surrender his bonds and *so relinquish the guarantee of the said State*." But he says also that the defendant "has since from time to time paid the interest due on these bonds from July 1st, 1868, to July 1st, 1879," and his receipts show upon calculation that this was on the basis of five per cent. upon the principal of the bonds and the last seven coupons and the semi-annual interest due July 1, 1866, making £100 on the £500 and £50 on the £250, capitalized into £600 and £300 respectively, just exactly as the treasurer, Mr. Wilson, testifies was done in the exchange of the bonds. In addition to the inevitable

conclusion which must be reached from these simple facts comes the executed endorsement of Mr. Coghlan's receipt for £15 on the £600 bonds and £7.10*s* on the £300 bonds for half-yearly dividend "as if it had been exchanged for a new bond."

Here, then, is a new and express contract to fund the eight semi-annual payments accepting five per cent. interest thereon, but retaining the security of his original bond with the State's guarantee and preserving the integrity and benefit of his formal protest against the State; and this arrangement he has acquiesced and concurred in from April 13, 1869, until this ungracious suit was brought August 28, 1880. The purchasers of the property under the foreclosure of the mortgage of July, 1868, took it subject to the lien of the appellant's mortgage-bond, but only subject to that lien as modified by his dealings therewith and his express contract endorsed upon the bonds, and their rights can not be ignored.

Now, having preserved his purpose of retaining his original bond to secure the guaranty of the State and still accepted the interest "due July 1, 1868, as if it had been exchanged for a new bond," the plaintiff in error must be regarded as having received the new bonds of the company in the place of his original ones as of the date of that receipt—April 13, 1869. He can not escape that position. His suit and all of this litigation, including his appeal, is merely a speculatory effort to avoid that logical result, which is the true legal effect, of his own agreement and his own writings, not only signed on the bonds and signed in his receipts to Fisher, the receiver, but shown by his own testimony and his verified petition. He is now, as it were, betting on the chances of the uncertainty of judicial decision. He puts up a small stake in the expense of the litigation, for his unneeded capital is secured and is drawing five per cent., the

most he could get for it at home, whilst the amount he will get if he wins is very large. He is the only one of these bondholders, foreign or domestic, who can not be satisfied.

By the very terms of the new bond, which he, by his receipts agreed to accept in exchange for his old ones, the pound sterling is fixed to be paid in currency of the United States at the rate of $4.44 and four-ninths, yet he clamors for the exchange at the current rate, which would buy a sight bill on London. In the language of the decree you are asked to reverse, "he consented to receive, and in fact did receive, payment of semi-annual instalments of interest precisely as if he had made the exchange—that is to say, he received on each £250 bond interest as if it were a £300 bond, and on each £500 bond he received interest as if it were a £600 bond."

Interest for January and July, 1867, and January, 1868.

The Second Assignment is that the court erred in not ordering the interest or coupons of above date, "which were not capitalized, to be paid with interest, from those respective dates to the date of the decree of 2d November, 1887."

And on page 27, folio 105, of the appellant's brief is the following:

"As to the Three Coupons Ignored by the Circuit Decree. These coupons are still attached to the bonds in the hands of the appellant, who is also the holder of the bonds. That they are not barred by time was not questioned. Nor are they. They became due January and July, 1867, and 1st January, 1868. This suit was begun on the 4th April, 1881. Twenty years is the bar to the bonds in South Carolina."

Of course this is an erroneous slip of the pen of counsel.

The printed reproduction of the photograph of the bonds conclusively shows that there are no such coupons upon it. In the nature of things there could not be since the bonds matured July 1, 1866, and no one ever heard of coupons on bonds for the payment of interest after their maturity.

We do not contend that this claim for interest due at the three periods named is barred by the statute of limitations, but it is a stale claim.

It is a very singular fact that no reference is made in the decree to the interest for these three periods of six months. If it had been a matter discussed or relied upon or claimed below, it is quite impossible to suppose that some mention would not have been made of it in some one of the several decrees in the cause. If it had been simply overlooked the calling of it to the attention of the court would have insured an amendment of some kind of the decree in relation to it. Our contention is that an absolute presumption of payment would arise from the facts in the record; but even if such presumption did not arise, that as a matter of both law and fact it was embraced in the agreement of April 13, 1869, expressed in the receipts for the "half-year's dividend due 1st of July, 1868, *as if it had been exchanged for a new bond.*" It is patent from this phraseology that either these three instalments were paid or else settled in this agreement.

The appellant received, and continued from time to time to receipt in the same manner for, the accruing interest up to and including July 1, 1880, and up to January 10, 1880, not a word by way of demand of this interest was ever made. It is not a question of the statute of limitations, but of interposing this stale claim under these circumstances as against the intervening and subsequent rights of the purchasers of this property.

But again, as appears at page 81 of the record, on July 2, 1879, the appellant's agent, Mr. Martin, receipted the receiver for £180 sterling," being interest due July 1, 1878, and January 1, 1879, on (12) bonds of the L. C. & C. R. R. Co. of £250 each, with *eight* overdue coupons [Note: We have shown there were seven coupons and the instalment due July, 1866.] attached, representing three hundred pounds sterling." On the same day another receipt for the same number of pounds for interest on the same dates on six £500 bonds " with eight overdue coupons attached, representing six hundred pounds sterling." On February 4, 1880, appellant personally receipts for the interest due July 1, 1879, on the £500 bonds "with eight overdue coupons attached, representing six hundred pounds sterling." These receipts are as silent as the decrees of the court in regard to these alleged unpaid coupons or instalments of interest. And why? For the manifest reason that when the appellant agreed on April 13, 1869, to capitalize the seven remaining unpaid coupons and one instalment of unpaid interest, and to do so *as if that old bond* "had been exchanged for a new bond," he made a new contract, and these three instalments were either paid or agreed to be treated as paid. This demand for their payment, first made in January, 1880, is an afterthought. In January, 1880, a receiver was in charge of the property of the corporation, and in consequence of the other bondholders having carried out in good faith the same arrangements which this appellant accepted, these are more assets wherewith to meet the responsibility. And the appellant, having abandoned the idea of looking to the State's guaranty, is now looking to the assets of the company alone for the payment of his debt. The reason for retaining the guarantee on the old bond exists no longer. The State's guaranty is no longer appreciated, and " it repenteth him much " that he has surrendered aught to re-

tain his old bond for that guaranty, and, seeing the difference between hindsight and foresight, he fain would undo what he then for a good consideration deliberately did, and he is now speculating on the chances of the court's supplementing his judgment.

WM. E. EARLE,
Attorney for Defendant in Error.

Office Supreme Court U. S.
FILED,
NOV 6 1891
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

HENRY COGHLAN
vs.
THE S. C. R. R. } No. 47.

Appellee's Explanation of Supplemental Brief for Appellant.

First Explanation.

The court gave Appellant leave to file a brief in reply. On the evening of Wednesday, the 4th instant, I have received a copy of what seems to be a Supplemental or cumulative brief. I do not wish to re-argue the case, but only to answer succinctly a few new points; but more particularly to explain some matters of fact which otherwise might be misunderstood.

I respectfully submit that there is no evidence as to the indorsement on the bonds that:

"It is written by the railroad company's agents, Dent, Palmer & Co., not by Coghlan's agents, Martin & Co."

It was not written by the railroad's agents.

In the second paragraph on page 2 of the Supplemental brief, to wit: "These agents held Coghlan's bonds from the year 1849 until the commencement of these proceedings," the words "these agents" do not refer to the *agents of the railroad company*, Dent, Palmer & Co., but to appellant's own agents, Martin & Co. It is MARTIN

who uses the language quoted, and he says "*my said firm.*" (R. p. 51, f. 131.)

It is very material who held the bonds, but if the Appellant's agent held them, as is clearly true, then it is very immaterial who wrote or signed the indorsement of the payment. For the presentation of the bonds by Appellant's agents for the money, and the indorsement in the same words literally "fore and aft" and time after time, is quite sufficient to make it Appellant's own language, even if there were nothing more: but, full personal knowledge of the exact transaction is brought directly home to Appellant.

On April 14, 1869, the very day after the first indorsements were made, Appellant's agents wrote him "The £175.10 consists of 5 per cent. on your £5,000 for one-half year and one-fifth of the interest which is due to you *on the capitalized overdue interest.*" (Martin & Co.'s letter to Coghlan, R., p. 61, f. 159.)

But, still more, Appellee does not rely solely upon the indorsed receipts, but also upon the following document, which is one of a class:

"LONDON, ENGLAND, *February* 4, 1880.

"Received of Messrs. Baring Brothers & Co., as agents of John H. Fisher, receiver of the South Carolina Railroad Company, ninety pounds sterling, being interest due July 1, 1879, on bonds of Louisville, Cincinnati and Charleston Railroad Company of £500 each, with eight overdue coupons attached, *representing six hundred pounds sterling* and numbered respectively as follows: 18 to 23, both inclusive.

"H. T. COGHLAN."

The "*capitalized interest*" added one-fifth to the principal, and therefore this interest was at the rate of five per cent.

One receipt may need to be explained, but two series of receipts, one set indorsed and the other separate, expressed

in different phraseology but pointing to the same logical conclusion, must reasonably be accepted as conveying the real purpose and the agreed meaning of the parties.

It is upon this concurrent conclusion from the phraseology of the two sets of receipts that I rely as evidence of an agreement.

Second Explanation.

The evidence chiefly relied on for the assertion,

> "that the agents of the railroad assured him that this acceptance of the dividends on his bond should not be so construed,"

is a correspondence between the *Appellant and his* agents, Messrs. Martin & Co.

It is gravely argued that since the court below did not formally rule out these letters that they have thereby ceased to be incompetent. I shall not unite in the discussion.

The italicised portion of the long quotation from Greenleaf in Smith *vs.* Smith copied into the Supplemental Brief of my friend is very apt when applied to the explicit language and the express terms of these two sets of receipts.

The testimony as to an "understanding" was that the receipt of the interest should not prejudice his rights "for or in respect of the aforesaid *bonds*"; and the payment of the bonds is not in contest.

If there is anything offensive in the use of the word "factitious," I apologize to all concerned. It must be manifest that I regarded this gentleman who is "neither a lawyer nor engaged in mercantile pursuits" as anything else than an *ignoramus*, and that his *alleged* ignorance was only "factitious."

The court will recall that it was stated by Appellant's Counsel as agreed between counsel as admitted that the

lawful rate of interest in South Carolina is seven per cent., and in England five per cent.

The Pound Sterling.

Section 3565 of the R. S. is the act of March 3, 1873, and the proposition that it shall fix the value of the pound sterling in a suit between parties over a cause of action dated in December, 1838, is unique. The act expressly purports to fix the value of the pound in a particular class of cases, viz., "in all payments by or to the Treasury," and to certain contracts "made after the first day of January, 1874."

The "new bond" referred to in the indorsement on the old State guaranteed bonds, just "as if it had been exchanged for a new bond," was clearly the new bonds proposed to be issued by the company under the mortgage dated July 1, 1868, a few months prior to the first indorsement of interest on the old bonds, which was April 13, 1869. (Record, p. 119 *et seq.*)

In that mortgage it is expressly stated (R., 122, f. 302) that the pound sterling shall "be estimated at $\$4.44\frac{4}{9}$," and to bear date of January 1, 1868.

In his petition to the court (R., 79, f. 198) Appellant says, "That in the year 1868 the S. C. R. Co. sent a special agent to this country to propose a fresh arrangement of the debt, viz., to substitute other bonds of the company for the bonds which had the indorsement of the State of South Carolina.

Clearly he knew all about the proposed arrangement, for he preferred to retain the guarantee on his old bonds.

As Appellant was retaining his old bonds solely on account of the unquestionable guarantee of the State and was receiving the interest thereon and "on the capitalized overdue interest" just "as if it had been exchanged or a new bond," surely the pound sterling in it must be

valued as its value is fixed in the new bond. That is just what the Circuit Court held, and it is, I respectfully submit, free from error.

Mr. Coghlan's Testimony.

On page 4 of the Supplemental Brief it is said that "Coghlan's view of the matter is expressed on p. 102, f. 255, of the record."

"He thought he was receiving 6 per cent., which he thought the legal rate of interest in South Carolina, on overdue principal."

Mr. Coghlan says that in a letter (printed at that reference) which he wrote on March 31, 1880, to his solicitor Mr. Corbin. But Mr. Coghlan was examined as a witness with the deliberation of a deposition (p. 48–9), but he does not testify to any such explanation, though he does testify (f. 126) to having received "certain moneys on account of the aforesaid bonds since their maturity. The amount of such moneys with the dates on which they were respectively paid respectively appear indorsed upon the said bonds."

It is safer to make a statement in a letter than to testify to it in a deposition.

The statement in this letter can not be reconciled with calculation of the amount of interest indorsed as paid on the bonds first on April 13, 1869, and Martin & Co's letter of same date (p. 61, f. 158), "We have received and credited your account with £175.10, *being half-year's* dividend on your S. C. Ry (not L. C. & C.) bonds," nor with their letter of the next day in which they refer to "the capitalized overdue interest."

Respectfully submitted.

WM. E. EARLE,
Attorney for Appellee.

1417 G STREET,
WASHINGTON, D. C.

No. 21. C.

UNITED STATES OF AMERICA.

£500 st'g. (Vignette.) £500 st'g.

STATE OF SOUTH CAROLINA.

Five Per Cent. Loan.

The Louisville, Cincinnati and Charleston Railroad Company, under the guarantee of the State of South Carolina, promise to pay to bearer five hundred pounds sterling, redeemable on the first day of January, one thousand eight hundred and sixty-six, and not before without the consent of the holder of this certificate, with interest thereon at the rate of five per cent. per annum from the date hereof, the said interest to be paid semi-annually, on the first days of January and July, on presenting the proper coupons for the same at the house of Palmers, Mackillop, Dent & Co., London, where the principal will also be redeemed on the surrender of this certificate.

In witness whereof the said company has caused its corporate seal to be hereunto affixed, at Charleston, this 31st day of December, 1838.

[SEAL.]

ROB'T Y. HAYNE, *President.*

E. H. EDWARDS,
Sec'y & Treas'r.

(*Copy of Coupons Attached.*)

Louisville, Cincinnati and Charleston Railroad Company warrant No. 55, for £12 10*s.*, being half-yearly interest on bond C, No. 21, payable January 1st, 1866.

£12 10*s.* E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 54, for £12 10*s.*, being half-yearly interest on bond C, No. 21, payable July 1st, 1865.

£12 10*s.* E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 53, for £12 10*s.*, being half-yearly interest on bond C, No. 21, payable January 1st, 1865.

£12 10*s.* E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 52, for £12 10*s.*, being half-yearly interest on bond C, No. 21, payable July 1st, 1864.

£12 10*s.* E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 51, for £12 10*s*., being half-yearly interest on bond C, No. 21, payable January 1st, 1864.

£12 10*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 50, for £12 10*s*., being half-yearly interest on bond C, No. 21, payable July 1st, 1863.

£12 10*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 49, for £12 10*s*., being half-yearly interest on bond C, No. 21, payable January 1st, 1863.

£12 10*s*. E. H. EDWARDS, *Treas'r.*

(Written across the face as follows:)

13 APRIL, 1869.

Paid on this bond £15, half-year dividend, due 1 July, 1868, as if it had been exchanged for a new bond.

For DENT, PALMER & CO.
P. J. WOOD.

15 JULY, 1869.

Paid a similar dividend to the above, due 1 January, 1869.
P. J. WOOD.

23 AUG., 1869.

Paid a similar dividend to the above, due 1 July, 1869.

20 JAN'Y, 1870.

Paid a similar dividend to the above, due 1 Jan'y, 1870.
P. J. WOOD.

(Endorsed on the back of bond as follows:)

An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes.

Be it enacted by the senate and house of representatives, now met and sitting in General Assembly, and by the authority of the same, That the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contract which shall be made for borrowing money by the Louisville, Cincinnati and Charleston Railroad Company from any person or persons, company or companies, corporation or corporations, to any amount not exceeding two millions of dollars, either in the United States or in Europe; and when such contract or contracts shall be made by bond or bonds, certificate or certificates, or other instrument or instruments signed by the president of the said company, under its seal, and countersigned by the secretary thereof, it shall be the duty of the

comptroller general of this State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, both as it respects the punctual payment of the principal and of the interest, according to the terms of the said contract or contracts: Provided, that the interest to be received thereby and made payable thereon shall not exceed the rate of five per cent. per annum; and provided, also, that the comptroller general shall not endorse any such contract until five hundred thousand dollars shall be paid to the company on the stock thereof, in which event he shall pledge the funds and faith of the State for one million of dollars; and when five hundred thousand dollars more shall be paid to the company on the stock thereof, the comptroller general shall pledge the funds and faith of the State for one other million of dollars.

In the senate-house, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-second year of the sovereignty and Independence of the United States of America.

PATRICK NOBLE,
President of the Senate.
D. L. WARDLAW,
Speaker of the House of Representatives.

The conditions of the above act having been faithfully complied with, I do hereby, for and in behalf of the State of South Carolina, endorse her guaranty on this bond for the payment and redemption of the principal and interest of the same.

WM. ED. HAYNE,
Comptroller.

(Endorsed on back of each coupon as follows): Payable at Messrs. Palmers, Mackillop, Dent & Co.

(Written across the back as follows:)

7 JULY, 1870.

Paid on this bond £15, half-year dividend, due 1 July, 1870, as if it had been exchanged for a new bond.

For DENT, PALMERS CO.
P. J. WOOD.

9 Jan'y, 1871. Do. do., due 1 Jan'y, 1871. P. J. Wood.
4 July, 1871. Do. do., due 1 July, 1871. W. Nyles.
8 Ap'l, '72. Do. do., 1 Jan'y, '72. P. J. Wood.
9 July, 1872. Do. do., 1 July, 1872. P. J. Wood.
16 Jan'y, 1873. Do. do., 1 Jan'y, 1873. P. J. Wood.
7 July, 1873. Do. do., 1 July, 1873. P. J. Wood.
13 Jan'y, 1874. Do. do., 1 Jan'y, 1874. P. J. Wood.
8 July, 1874. Do. do., 1 July, 1874. P. J. Wood.
1 Jan'y, 1875. Do. do., 1 Jan'y, 1875. P. J. Wood.
5 July, 1875. Do. do., 1 July, 1875. P. J. Wood.
1 Jan'y, 1876. Do. do., 1 Jan'y, 1876. P. J. Wood.

18 July, 1876. Do. do., 1 July, 1876. W. Berry.
2 Jan., 1877. Do. do., 1 Jan., 1877. W. Berry.
9 July, 1877. Do. do., 1 July, 1877. W. Berry.
4 Jan'y, 1878. Do. do., 1 Jan'y, 1878. W. Berry.

(Stamped on back as follows:)

Paid £30 sterling, interest due July 1st, 1878, and January 1, 1879, on this bond.
Paid £15 sterling, interest due July 1, 1879, on this bond.
Paid £15 sterling, interest due January 1, 1880, on this bond.
Paid £15 sterling, interest due July 1, 1880, on this bond.

No. 28. C.

UNITED STATES OF AMERICA.

£250 st'g. (Vignette.) £250 st'g.

STATE OF SOUTH CAROLINA.

Five Per Cent. Loan.

The Louisville, Cincinnati and Charleston Railroad Company, under the guarantee of the State of South Carolina, promise to pay to bearer two hundred and fifty pounds sterling, redeemable on the first day of January, one thousand eight hundred and sixty-six, and not before without the consent of the holder of this certificate, with interest thereon at the rate of five per cent. per annum from the date hereof, the said interest to be paid semi-annually, on the first days of January and July, on presenting the proper coupons for the same at the house of Palmers, Mackillop, Dent & Co., London, where the principal will also be redeemed on the surrender of this certificate.

In witness whereof the said company has caused its cor-
[SEAL.] porate seal to be hereunto affixed, at Charleston, this 31st day of December, 1838.

ROB'T Y. HAYNE, *President.*

E. H. EDWARDS,
Sec'y & Treas'r.

(*Copy of Coupons Attached.*)

Louisville, Cincinnati and Charleston Railroad Company warrant No. 55, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable January 1st, 1866.

£6 5*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 54, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable July 1st, 1865.

£6 5*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 53, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable January 1st, 1865.

£6 5*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 52, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable July 1st, 1864.

£6 5*s*. E. H. EDWARDS, *Treas'r.*

Louisville, Cincinnati and Charleston Railroad Company warrant No. 51, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable January 1st, 1864.

£6 5*s*. E. H. EDWARDS, *Treas'r*.

Louisville, Cincinnati and Charleston Railroad Company warrant No. 50, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable July 1st, 1863.

£6 5*s*. E. H. EDWARDS, *Treas'r*.

Louisville, Cincinnati and Charleston Railroad Company warrant No. 49, for £6 5*s*., being half-yearly interest on bond C, No. 28, payable January 1st, 1863.

£6 5*s*. E. H. EDWARDS, *Treas'r*.

(Written across the face as follows:)

13 APRIL, 1869.

Paid on this bond £7 10*s*., half-year dividend, due 1 July, 1868, as if it had been exchanged for a new bond.

For DENT, PALMER & CO.
P. J. WOOD.

15 JULY, 1869.

Paid a similar dividend to the above, due 1 January, 1869.
P. J. WOOD.

23 AUG., 1869.

Paid a similar dividend to the above, due 1 July, 1869.
P. J. WOOD.

20 JAN'Y, 1870.

Paid a similar dividend to the above, due 1 Jan'y, 1870.
P. J. WOOD.

(Endorsed on the back of bond as follows:)

An act to lend the credit of the State to secure any loan which may be made by the Louisville, Cincinnati and Charleston Railroad Company, and for other purposes.

Be it enacted by the senate and house of representatives, now met and sitting in General Assembly, and by the authority of the same, That the faith and funds of the State of South Carolina be, and the same are hereby, pledged to secure the punctual payment of any contract which shall be made for borrowing money by the Louisville, Cincinnati and Charleston Railroad Company from any person or persons, company or companies, corporation or corporations, to any amount not exceeding two millions of dollars, either in the United States or in Europe; and when such contract or contracts shall be made by bond or bonds, certificate or certificates, or other instrument or instruments signed by the president of the said company, under its seal, and countersigned by the secretary thereof, it shall be the duty of the

comptroller general of this State to endorse thereon that the faith and funds of the State of South Carolina are pledged to the faithful performance of the said contract or contracts, both as it respects the punctual payment of the principal and of the interest, according to the terms of the said contract or contracts: Provided, that the interest to be received thereby and made payable thereon shall not exceed the rate of five per cent. per annum; and provided, also, that the comptroller general shall not endorse any such contract until five hundred thousand dollars shall be paid to the company on the stock thereof, in which event he shall pledge the funds and faith of the State for one million of dollars; and when five hundred thousand dollars more shall be paid to the company on the stock thereof, the comptroller general shall pledge the funds and faith of the State for one other million of dollars.

In the senate-house, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-second year of the sovereignty and Independence of the United States of America.

PATRICK NOBLE,
President of the Senate.
D. L. WARDLAW,
Speaker of the House of Representatives.

The conditions of the above act having been faithfully complied with, I do hereby, for and in behalf of the State of South Carolina, endorse her guaranty on this bond for the payment and redemption of the principal and interest of the same.

WM. ED. HAYNE,
Comptroller.

(Endorsed on back of each coupon as follows): Payable at Messrs. Palmers, Mackillop, Dent & Co.

(Written across the back as follows:)

7 JULY, 1870.

Paid on this bond £7 10s., half-year dividend, due 1 July, 1870, as if it had been exchanged for a new bond.

For DENT, PALMERS CO.
P. J. WOOD.

9 Jan'y, 1871. Do. do., due 1 Jan'y, 1871. P. J. Wood.
4 July, 1871. Do. do., due 1 July, 1871. W. Nyles.
8 Jan'y, '72. Do. do., 1 Jan'y, '72. P. J. Wood.
9 July, 1872. Do. do., 1 July, 1872. P. J. Wood.
16 Jan'y, 1873. Do. do., 1 Jan'y, 1873. P. J. Wood.
7 July, 1873. Do. do., 1 July, 1873. P. J. Wood.
13 Jan'y, 1874. Do. do., 1 Jan'y, 1874. P. J. Wood.
8 July, 1874. Do. do., 1 July, 1874. P. J. Wood.
1 Jan'y, 1875. Do. do., 1 Jan'y, 1875. P. J. Wood.
5 July, 1875. Do. do., 1 July, 1875. P. J. Wood.
1 Jan'y, 1876. Do. do., 1 Jan'y, 1876. P. J. Wood.

18 July, 1876. Do. do., 1 July, 1876. W. Berry.
2 Jan., 1877. Do. do., 1 Jan., 1877. W. Berry.
9 July, 1877. Do. do., 1 July, 1877. W. Berry.
4 Jan'y, 1878. Do. do., 1 Jan'y, 1878. W. Berry.

(Stamped on back as follows:)

Paid £15 sterling, interest due July 1st, 1878, and January 1, 1879, on this bond.
Paid £7 10*s.* sterling, interest due July 1, 1879, on this bond.
Paid £7 10*s.* sterling, interest due January 1, 1880, on this bond.
Paid £7 10*s.* sterling, interest due July 1, 1880, on this bond.